

**TOWN OF SUNAPEE
ZONING ORDINANCE**

ARTICLE I: ENACTMENT

1.10 TITLE.

The ordinance shall be known and may be cited as the “Zoning Ordinance of the Town of Sunapee, New Hampshire”.

1.20 PURPOSE.

The purpose of the ordinance is to promote the health, safety and general welfare of the community by encouraging the most appropriate use of land (RSA 674:16,17), thereby protecting our natural resources and preserving the vitality, atmosphere and varied economic forces of our town. Zoning is a legislative tool that enables local government to meet more effectively the demands of an evolving and growing community, thus providing a workable framework for the fair and reasonable treatment of individuals.

1.30 VALIDITY.

1.31 Adoption. Pursuant to the authority vested in towns by Chapters 672-676, New Hampshire Revised Statutes Annotated, 1983, the following ordinance is hereby enacted by the voters of the Town of Sunapee, New Hampshire in official Town Meeting convened March 10, 1987.

1.32 Saving Clause. Should any section or provision of this ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the ordinance as a whole or any other part thereof.

1.33 Legal Nonconformity. This ordinance shall not apply to existing structures nor to structures under construction at the time of passage of this ordinance. Existing uses shall not be affected by this ordinance. Future changes to the structure(s) or usage changes shall be consistent with this ordinance.

1.34 Interpretation of Ordinance. Where a provision of this ordinance differs from that prescribed by any other applicable statute, ordinance, or regulation, that provision which imposes the greater restriction or the higher standard shall govern.

1.40 AMENDMENT

1.41 Procedure for Amendment. The provision of this ordinance may be amended with the procedure provided by Chapter 675, New Hampshire Revised Statutes Annotated, 1983.

1.42 Filing of Zoning Ordinance Amendments. All Zoning Ordinance amendments shall be placed on file with the Town Clerk for public inspection.

ARTICLE II: ZONING DISTRICTS

2.10 ZONING MAP AND DESCRIPTION OF DISTRICTS

For the purpose of this ordinance, the zoning map officially entitled “Sunapee Zoning Map” is adopted as part of the ordinance. The Sunapee Zoning Map shows a division of the Town into the following districts:

VC	-	Village-Commercial District	
VR	-	Village-Residential District	
MI	-	Mixed Use I District	
MII	-	Mixed Use II District	
R	-	Residential District	
RR	-	Rural-Residential District	
RL	-	Rural Lands District	(Amended 3/08/2011)

2.20 ZONING MAP

The official Zoning Map shall be located in the Town Clerk’s Office and is hereby incorporated as part of this ordinance. A certificate signed by the Town Clerk, giving notice of adoption of an official map, including the date of its enactment, shall be filed with the Registry of Deeds of Sullivan County. This certificate shall be accompanied by a certified copy of the official map.

2.30 DISTRICT PURPOSE AND DESCRIPTION.

All district boundaries are generally described below and are more specifically detailed on the Zoning Map per Section 2.20 of this Ordinance.

Village-Commercial District – The Village-Commercial Districts in the Town of Sunapee are patterned after the typical New England town centers. These areas are characterized by the highest densities of land use and also contain the mix of land uses associated with village centers, including commercial, public, institutional, and both single-family and multi-family land uses. In general, the two Village-Commercial Districts are located in Sunapee Village (including Sunapee Harbor and Lower Village Area) and Georges Mills and are further described as follows:

In Sunapee Village, the Village-Commercial District begins at the intersection of Route 11 and Route 103B and goes southwesterly to the intersection of Route 11 and Winn Hill Road, thence northwesterly along Old Winn Hill Road and North Road to the intersection of West Court Road, thence east-northeasterly to the end of School Street, thence northerly to a point 600’ north of the center of Sargent Road and 400’ west of the center of Route 11, thence due east to a point 100’ easterly of the center of Route 11, thence southerly to the intersection of Old Georges Mills Road, Central Street, and Route 11, thence south-southeasterly to a point 200’ east of the center of Route 11, and 200’ north of the center of Main Street, thence easterly to a point on the shore of Lake Sunapee which is 400’ north of the dam, thence southerly along Lake Sunapee to said dam, thence easterly along Lake Sunapee 600’, thence southerly to the intersection of Quarry Road and Lake Avenue, thence southwesterly to the end of Maple Court, thence northwesterly to the intersection of River Road and Maple Street, thence westerly to a point on River Road which is 200’ westerly of the intersection of River Road and Maple Street,

thence southerly running parallel to Maple Street to a point on Beech Street, thence westerly along Beech street to the intersection of Route 103B, thence along Route 103B north-northwesterly to the point of beginning. (**Amended 3/12/2013**)

In Georges Mill Village, the Village-Commercial District is centered at a point at the intersection of Route 11 and Springfield Road and includes all the lands within a 600' radius of said point.

Village-Residential District – The Village-Residential Districts in the Town of Sunapee are areas characterized by mostly single-family and two-family residential with some low-impact commercial uses. In general, the two Village-Residential Districts are adjacent to the two Village-Commercial Districts in Sunapee Village and Georges Mills and are further described as follows:

In Sunapee Village, the Village-Residential District begins at a point at the end of Maple Court, thence southerly to a point 500' due east of the intersection of Route 103B and Schoolhouse Lane, thence along Schoolhouse Lane to the intersection with Stagecoach Road, thence northerly to a point 200' south of the center of Chase Street and 200' west of the center of Route 103B, thence westerly to the intersection of Lower Main Street and Route 11, thence northwesterly along the discontinued road 500', thence east-northeasterly parallel to West Court Road to the center of North Road, then southeasterly to the intersection of North Road and Lower Main Street, thence southeasterly along discontinued road to the intersection of Winn Hill Road and Route 11, thence easterly along Route 11 to the intersection with Route 103B, thence easterly and southerly along Route 103B to the intersection with Beech Street, thence easterly along Beech Street approximately 200', thence northerly and parallel to Maple Street to the center of River Road thence easterly along River Road to the intersection with Maple Street, thence southeasterly to the point of beginning. The Village-Residential District also includes an area beginning at a point along the shore of Lake Sunapee 400' north of the dam, thence west-north westerly to a point 200' north of the center of Main Street and 200' east of the center of Route 11, thence northerly to the intersection of Old Georges Mills Road, Central Street and Route 11, thence northerly 1000' to a point which is 100' easterly of the center of Route 11, thence southeasterly to the point of beginning. (**Amended 3/11/2014**)

In Georges Mills Village, the Village-Residential District begins at the intersection of Springfield Road and Oak Ridge Road and goes due west 1200', thence southerly to the intersection of Route 11 and the northerly terminus of Jobs Creek Road, thence east-southeasterly to the shore of Lake Sunapee, thence northerly along the shore of Lake Sunapee to the arc which defines the Village-Commercial District, thence westerly/northerly/easterly along the arc which defines the Village-Commercial District to the intersection with Springfield Road, thence northerly along Springfield Road to the point of beginning. (**Adopted 3/8/2011**)

Mixed-Use I District – The Mixed-Use I areas of the Town of Sunapee provide opportunities for commercial, light industrial, and tourism related businesses. The two Mixed Use I areas are generally located in the Wendell Village area and the area surrounding the intersections of Route 103, Brook Road and Cross Road and are further described as follows:

In Wendell Village, the Mixed-Use I District begins at a point at the center of Route 103 which is 300' south of its southerly intersection with Depot Road and goes due west to the Newport Town Line, thence north along the Newport town line to a point which is due east of a point on Route 11 which is 200' southwesterly of its intersection with Sleeper Road, thence westerly to aforementioned point 200' southwesterly of the intersection with Route 11 and Sleeper Road, thence southerly to the intersection of Route 103 and Youngs Hill Road, thence southerly along Route 103 to the point of beginning. In the Route 103/Brook Road area, the Mixed Use I District can be described as the area whose centerline is Route 103 starting 1000' westerly of the intersection of Cross Road and Route 103 and continuing to the intersection of Brook Road and Route 103. The district is all of the lands 400' northerly and southerly of this centerline.

Mixed-Use II District - The Mixed Use II District of the Town of Sunapee offers increased opportunities for light commercial uses and increased residential densities while maintaining the general residential character of the area. In general, the Mixed Use II District is located along Avery Road and adjacent portions of Sargent Road and is further described as follows:

The Mixed-Use II District Begins at the end of Avery Road, thence runs due east 400' to a point, thence south-southeasterly to a point 600' north of the center of Sargent Road and 400' west of the center of Route 11, thence due south to the center of Sargent Road, thence northerly and westerly along Sargent Road to a point 400' westerly of the intersection of Sargent Road and Avery Road, thence north-northwesterly to a point 400' due west of the end of Avery Road, thence due east to the point of beginning. **(Adopted 3/08/2011)**

Residential District – The Residential District of the Town of Sunapee are areas primarily characterized by medium density residential housing and home based businesses. These areas are generally located adjacent to the existing village centers and are further described as follows:

In the area surrounding Sunapee Village, the Residential District begins at a point at the intersection of Winn Hill Road and Stagecoach Road and goes northwesterly to the 90 degree turn in West Court, thence northerly to the intersection of North Road and Sargent Road, thence northeasterly to the center of the cul-de-sac of Sunapee Heights Court, thence easterly to the northerly intersection of Jobs Creek Road and Route 11, thence along Jobs Creek Road to its intersection with Garnet Street, thence southeasterly to the northeast corner of Dewey Beach, thence along lake Sunapee through the Harbor area and out to Burkehaven where Tara Hall Lane intersects Burkehaven Lane, thence northerly along Burkehaven Lane to its intersection with Lake Avenue and Burkehaven Hill Road, thence along Burkehaven Hill Road to its intersection with Harbor Hill Road, thence southwesterly to a point

500' due east of the intersection of Route 103B and School House Lane, thence westerly 500' to the intersection of Route 103B and School House Lane, thence along School House Lane to its intersection with Stagecoach Road, thence along Stagecoach Road to the point of beginning. This district includes all lands within the area described above with the exception of the Village-Commercial, Village-Residential, and Mixed Use II areas described above.

In the area surrounding Georges Mills Village, the Residential District begins at a point where the Towns of Sunapee, New London, and Springfield meet and goes southerly along the New London/Sunapee town line to the northerly shore of Lake Sunapee, thence northwesterly to the northerly intersection of Route 11 and Jobs Creek Road, thence northwesterly to the end of Meadow Brook Road, thence northerly to the Springfield town line at point 600' westerly of Stony Brook Road, thence along the Sunapee/Springfield town line easterly to the point of beginning. This district includes all lands within the area described above with the exception of the Village-Commercial and Village-Residential areas described above.

Rural-Residential District – The Rural-Residential areas of the Town of Sunapee are primarily characterized by low-density residential housing and home-based businesses. There is also the opportunity in this district for low-impact commercial uses in appropriate locations near existing utilities and highways. The Rural-Residential District includes the remainder of the Town of Sunapee not specifically described in this section and also includes all of the major islands of Lake Sunapee.

Rural Lands District – The Rural Lands area of the Town of Sunapee are remote natural areas of the Town. Typical land uses include very low-density residential housing and associated recreational and forestry operations. This district is generally located in the Northwest corner of the Town of Sunapee and is further described as follows:

The Rural Lands District begins at a point at the intersection of Route 11 and Trow Hill Road and goes westerly along Trow Hill Road to its intersection with North Road, thence westerly to the Croydon town line at a point 1000' north of Perkins Pond Road, thence northerly along the Sunapee/Croydon town line to the Springfield town line, thence easterly along the Springfield town line to a point 600' westerly of Stony Brook Road, thence southerly to the end of Meadow Brook Road, thence southeasterly to the northerly intersection of Route 11 and Jobs Creek Road, thence southerly along Route 11 to the point of beginning.

Water Resources Overlay Districts – This District is comprised of three areas determined by naturally occurring phenomena. This is an overlay district; its boundaries are independent but contained within the five districts described above. The three areas comprising the Water Resources Overlay District are:

- 1) **Wetlands** - The Wetlands Overlay District is defined as those areas delineated as very poorly and poorly drained soils by the U.S. Department of Agriculture. Soil Conservation Service, in the Soil Survey of Sullivan County contiguous to surface waters

such as lakes, ponds and streams, subjected to high water tables for extended periods of time and includes, but are not necessarily limited to, all such areas delineated as Wetlands on the current Wetlands Overlay District Map, which is on file in the office of the Planning Board. Where it is alleged that an area has been incorrectly delineated as a wetland, or that an area is not so designated meets the criteria for Wetlands designation, the Planning Board shall determine whether the regulations contained herein have application. The Planning Board shall make their judgment under this section only upon the determination by a qualified wetland or soil scientist on the basis of additional on-site investigation or other suitable research that the information contained on the Wetlands Overlay District Map is incorrect. This evidence shall be acceptable only when presented in written form by said scientist to the Planning Board. Any such investigation, including soil tests, shall be conducted at the expense of the landowner or developer.

- 2) **Aquifers** - The Aquifer Overlay District shall be defined as the areas having a high, medium or low potential to yield groundwater as shown on the Aquifer Overlay District Map on file in the Office of the Planning Board.
- 3) **Shorelines** – The Shoreline Overlay District shall be defined as all lands within 250’ feet of lakes and ponds greater than 10 acres and the Sugar River (a fourth-order stream) as shown on the Shoreline Overlay District Map on file in the Office of the Planning Board.

The purpose of the Water Resources Overlay District is to protect our water resources and protect these parts of Sunapee that are particularly ecologically fragile. The Water Resources Overlay District encompasses areas of the other districts. Where the Water Resources Overlay District is superimposed over another zoning district, the more restrictive regulations shall apply. (Amended 3/11/2008) (Amended 3/12/2013)

2.40 INTERPRETATION OF DISTRICT BOUNDARIES

2.41 Location of District Boundaries. District Boundaries shown within the lines of roads, streets, and transportation rights-of-way shall be deemed to follow the center lines. The vacation of roads shall not affect the location of such district boundaries. When the Board of Selectmen or their duly appointed agent cannot definitely determine the location of a district boundary by such center lines, by the scale of dimensions stated on the Zoning Map, or by the fact that it clearly coincides with a property line, it shall refuse action, and the Zoning Board of Adjustment, upon appeal, shall interpret the location of the district boundary with reference to the scale of the Zoning Map and the purposes set forth in all relevant provisions of this ordinance.

2.42 Lots crossed by District Lines. If a lot or abutting lots owned by one person are intersected by a district boundary, the lots shall be considered to be in the district which comprises the majority of the lot area.

2.43 Lots crossed by Town Lines. When part of a lot in single or joint ownership lies outside the Town of Sunapee, the portion within Sunapee shall conform to the use regulation of the ordinance. In applying dimensional controls to that portion of the lot within Sunapee, the dimensions of the whole lot shall be considered without reference to the Town Line.

Article III – Dimensional Controls							
Section 3.10 – Table of Dimensional Controls (Amended 3/11/2014)(Amended 3/14/2017)							
Requirement	Village Comm.	Village Residential	Mixed Use I	Mixed Use II	Residential	Rural Residential	Rural Lands
Minimum Lot Size	0.5 Acres	0.5 Acres	0.5 Acres	1.0 Acres	1.0 Acres	1.5 Acres	3.0 Acres
Maximum Residential Density (du=dwelling unit)	1du 10,000 Square Ft.	1du 10,000 Square Ft.	1du 0.5 Acres	1du 0.5 Acres	1du 1.0 Acres	1du 1.5 Acres	1du 3.0 Acres
Minimum RD Frontage	75'	75'	75'	75'	75'	100'	150'
Minimum Front Setback (Rt. 11,103, 103B)	75'	75'	75'	75'	75'	75'	75'
Minimum Front Setback (All other roads as defined in Article XI)	40'	40'	40'	40'	50'	50'	75'
Side & Rear Setbacks for Lots Meeting Or Exceeding Minimum lot size or Lots which are not Pre-Existing	10'	15'	15'	25'	15'	25'	50'
Side & Rear Setbacks for Pre-existing Lots Below Minimum Size	10'	10'	10'	15'	10'	15'	25'
Maximum Lot Coverage	80%	60%	80%	50%	50%	40%	30%
Maximum Structure Height	40'	40'	40'	40'	40'	40'	40'

· (If a structure is allowed a reduced side or rear setback due to inadequate lot size, the portion of the structure in the area of reduced setback shall have a maximum height of 25'.)

Section 3.20 – Table of Dimensional Controls – Districts Overlaid (Amended 3/12/2013)							
Requirement	Village Comm.	Village Residential	Mixed Use I	Mixed Use II	Residential	Rural Residential	Rural Lands
Minimum Lot Size:							
1) Shoreline	1.0 Acres	1.0 Acres	1.0 Acres	N/A	1.0 Acres	1.5 Acres	1.5 Acres
2) Aquifer	2.0 Acres	2.0 Acres	2.0 Acres	2.0 Acres	2.0 Acres	2.0 Acres	2.0 Acres
3) Wetlands	1.5 Acres	1.5 Acres	1.5 Acres	1.5 Acres	1.5 Acres	1.5 Acres	1.5 Acres
Maximum Lot Coverage:							
1) Shoreline Impermeable	60%	30%	N/A	N/A	30%	25%	20%
Permeable & Impermeable combined	80%	60%	N/A	N/A	50%	40%	30%
2) Aquifer	20%	20%	20%	20%	20%	20%	20%
3) Wetlands	0%	0%	0%	0%	0%	0%	0%

3.40 ADDITIONAL REQUIREMENTS.

- (a) **(Repealed 3/14/2006)**
- (b) **(Repealed 3/14/2006)**
- (c) The minimum setback between structures or parking areas and water bodies shall be 50'.
- (d) Lot depth to width ratio (or width to depth) shall not exceed 4:1 unless otherwise approved by the Planning Board.
- (e) Parking for one and two-family residential units shall be as follows:
One-family dwelling (up to 4 bedrooms) = 2 spaces (each additional bedroom) = ½ space/bedroom
Two-family dwelling (up to 8 bedrooms) = 4 spaces (each additional bedroom) = ½ space/bedroom
Total required spaces must be rounded up to nearest whole space. **(Amended 3/8/2005)**
- (f) Piers and Wharves shall not be subject to the fifty foot waterfront setback.
- (g) Repealed 3/11/2014
- (h) Dormers, gables, skylights, and other roof changes shall be allowed on non-conforming structures provided that such additions are no higher than the existing predominant roof lines of the subject structure and do not extend beyond the horizontal footprint. **(Adopted 3/10/1992)**
- (i) The maximum height of any windowsill or roof eaves shall be no more than 30 feet above the grade directly below it. Windows or eaves located in roof appendages such as cupolas or skylights shall be excluded from this ordinance. **(Adopted 3/13/2001)**
- (j) Retaining walls over 42" in height must meet all of the setback requirements of the Zoning District in which they are constructed. All multi-tiered retaining walls must have a terrace whose depth is equal to or greater than the adjacent height of any wall. **(Adopted 3/13/2001) (Amended 3/14/2006)**
- (k) If a pre-existing structure contains enclosed living space, which projects over a non-conforming open area, the open area may be enclosed provided an application for a Certificate of Zoning Compliance has been approved. **(Adopted 3/13/2001)**
- (l) There shall be no construction on slopes which exceed 25%, and have an elevation change of more than 20'. Driveways, utilities, and stairways would be exempt from this requirement provided a drainage and erosion control plan is prepared by a licensed professional engineer. **(Adopted 3/9/2004)**
- (m) Travel Trailers, which include, but are not limited to, camper trailers, motor homes, recreational vehicles, tent trailers and truck campers, are permitted subject to the following restrictions:
 - 1) The owner of a travel trailer may store up to two (2) such trailers on his/her property in as inconspicuous a location as possible;
 - 2) A travel trailer may be used for temporary sleeping quarters for not more than 90 days per 12 month period unless a Certificate of Compliance is issued. Sewage disposal must be in compliance with New Hampshire Water Supply and Pollution Control regulations or approved by the

- Sunapee Water and Sewer Department if on municipal sewer;
- 3) All travel trailers used for temporary sleeping quarters must be in compliance with all other provisions of this ordinance including building setbacks;
 - 4) If three (3) or more travel trailers are to be placed on an individual lot and used as sleeping quarters, a Site Plan Review approval must be granted by the Planning Board. **(Adopted 3/9/2004)**
- (n) An erosion control plan per the specifications in Section 4.33(B)(8)(a)(I) must be submitted to the Zoning Administrator prior to any new construction exceeding 1000 square feet of land disturbance occurs on slopes greater than 15%. An erosion control plan prepared by a licensed professional engineer must be submitted to the Zoning Administrator prior to any land clearing in excess of 100,000 square feet. **(Amended 3/8/2011)**
- (o) For all new construction projects in the Rural-Residential and Rural Lands Districts, the existing 25' vegetative buffer extending back from the state right-of- ways of Route 11, Route 103, and Route 103B shall be preserved. If no vegetation currently exists, then new plantings will be required, which shall include both trees and evergreen shrubs. Plantings preferably will be grouped, not evenly spaced and shall be located or trimmed to avoid blocking egress visibility. Driveways are exempt from this requirement. **(Adopted 3/10/09)**

3.50 SPECIAL EXCEPTIONS.

- (a) A boat house may be granted an exemption from the water setback requirements, provided that:
- (1) it has the approval of the Conservation Commission and a permit from the Wetlands Board; and NH DES. **(Amended 3/10/2009)**
 - (2) the structure is a restoration or replacement of an existing boathouse.
 - (3) it is to be solely for boat and boating accessory storage (such as oars, life jackets, and fishing gear);
 - (4) its completed height is limited to one story, or as high as necessary to elevate the boat for winter storage. **(Amended 3/9/1993)**
- (b) The ZBA may allow a lesser front setback provided that all of the following conditions are met:
- (1) the lot for which the lesser front setback is requested is a pre-existing lot and non-conforming due to lot size;
 - (2) the majority of lots on the same side of the road and within 500' of both sides of the subject lot have structures of equal or greater type which do not meet front setback requirements (the hierarchy of structures from greater to less is house>garage>shed); **(Amended 3/14/2017)**
 - (3) the proposed structure for which the Special Exception is being sought shall be no closer to the centerline of road right-of-way than any other structure of equal or greater type used in the comparison in Paragraph (2), above;
 - (4) the proposed structure shall be no closer than 10' to the right-of-way line of the road and;

- (5) the portion of the proposed structure encroaching on the front setback shall be no higher than 25'. **(amended 3/11/2008)**
- (c) **(Repealed 3/11/2008)**
- (d) **(Repealed 3/12/1996)**
- (e) **(Repealed 3/14/2006)**
- (f) If a pre-existing primary structure is non-conforming due to an inadequate front setback, the ZBA may allow additions to the structure providing such changes do not further decrease the front setback.
- (g) The setback for fences five feet high and over may be reduced to a minimum of two (2) feet from property lines if, in the judgment of the ZBA, such will not adversely affect neighboring properties. **(Amended 3/10/1992)**
- (h) The ZBA may allow a fence over 5 feet in height (measured from ground level) to be placed on a property boundary line provided that:
 - (1) the landowners of the properties for which the fence is providing a boundary apply as co-applicants to the ZBA;
 - (2) the subject property boundary is delineated by a licensed land surveyor;
 - (3) such fence in the judgment of the ZBA will not adversely affect other neighboring properties;
 - (4) an agreement between subject owners is filed with the Registry of Deeds indicating that the proposed fence location is acceptable to all parties and such agreement will run with the property's chain of title. **(Amended 3/10/1992)**
- (i) The ZBA may allow a pre-existing non-conforming structure to be enlarged, replaced and/or the roofline altered provided that:
 - (1) such enlargement or replacement will not increase the horizontal dimensions of the structure unless such horizontal increase would ordinarily be permitted by the Ordinance;
 - (2) the existing structure is a house (living area only), garage, or commercial building;
 - (3) the existing structure is less than 24' in height;
 - (4) the enlarged or replaced structure will be no more than 10' additional in height than the pre-existing structure;
 - (5) any roof changes are within the height requirements set forth in this Ordinance;
 - (6) in the judgment of the ZBA no abutter will be adversely affected by the enlargement (loss of view will not be considered an adverse impact);
 - (7) all State and local permits are acquired to insure compliance with Article VII of the Ordinance;
 - (8) such enlargement or replacement, in the judgment of the ZBA, is consistent with the intent of the Ordinance. **(Adopted 3/10/1992 (Amended 3/12/1996)&(Amended 3/14/2000) (Amended 3/13/2007) (Amended 3/11/2014)**

(j) The ZBA may allow for the placement of ramps, walkways, elevators, or other access enablers for the handicapped that would otherwise be in non-conformance to the ordinance provided that, in the judgment of the ZBA, such placement will

- (1) fairly utilize the lot, and
- (2) be consistent with the intent of the Ordinance. **(Adopted 3/10/1992)**
- (3) the structure is temporary and not considered a permanent footprint. **(Amended 3/12/2013)**

(k) If a pre-existing house is located entirely within the 50' water bodies setback, additions may be made to the structure provided that:

- (1) the house is at least 40' from the water body at all points where the addition is proposed.
- (2) the proposed addition is to be only on the side of the structure away from the water body and behind the existing structure.
- (3) the proposed addition is no higher than 25' from the finished grade at its highest point. **(Adopted 3/13/2001)**

3.55 ADDITIONAL CRITERIA FOR DIMENSIONAL SPECIAL EXCEPTIONS

- (1) The granting of the Special Exception, in the judgment of the ZBA, is necessary to fairly utilize the lot and
- (2) The granting of the Special Exception, in the judgment of the ZBA, is consistent with the intent of the Ordinance and Master Plan.

ARTICLE IV: USE REGLATIONS

4.10 PERMITTED USES - All districts.

The following uses are permitted in each zoning district, subject to the other provisions of this ordinance. Whenever a use is permitted by right or special exception in any district, it may be used in conjunction with any other permitted or special exception use in that district. All uses are subject to other provisions of this ordinance:

<u>Village Commercial District – (VC)</u>	
Permitted by Right	
Accessory Uses	Municipal Buildings & Facilities
Assembly Halls	Museums & Galleries
Banks	Nursing & Convalescent Homes
Bed & Breakfast, Tourist Homes, Inns, Lodging & Boarding Services	
Playhouse/Performing Arts/Theatre	Post Offices
Churches	Professional Offices & Clinics
Day Care	Restaurants (excluding Drive-in Restaurants)
Funeral Homes	Retail (up to 15,000 SF)
Home Business	Schools (Public & Private)
Home Occupation Services	Laundromat & Dry Cleaners
Shopping Centers (up to 15,000 SF)	Motels & Hotels
Single-Family Dwellings	Multi-Family Dwellings (3 to 5 Units)
Two-Family Dwellings	

Permitted by Special Exception	
Accessory use/wind generation systems (Adopted 3/10/09)	
Auto, Boat & Engine Repair Shops	Veterinarians
Marinas	Yards, (Lumber, Etc.)
Village Residential District – (VR)	
Permitted Uses by Right:	
Accessory Uses	Museums & Galleries
Bed & Breakfast, Tourist Home, Inns, Lodging & Boarding Services	Professional Offices and Clinics
Day Care	Single-Family Dwellings
Funeral Homes	Two-Family Dwellings
Home Business	Multi-Family Dwellings (3 to 5 units)
Home Occupation	
Permitted Uses by Special Exception:	
Accessory Use/Wind Generator	Churches
Municipal Buildings and Facilities	Retail (up to 1,000 SF)
Banks	Nursing and Convalescent Homes
Mixed Use I District – (MI)	
Permitted Uses by Right:	
Accessory Uses	Light Industry
Auction Halls	Long Term Storage Facility
Bed & Breakfast, Tourist Home, Inns	Manufactured Housing/Mobile Homes
Lodging & Boarding	Motels & Hotels
Boat Storage	Municipal Buildings & Facilities
Churches	Professional Offices & Clinics
Contractor’s Yards (Added 3/9/2004)	Restaurants
Funeral Homes	Retail (up to 15,000 S.F.)
Home Business	Single-Family Dwellings
Home Occupations	Two-Family Dwellings
Hospitals	Veterinarian
Laundromats & Dry Cleaners	Warehousing (Added 3/11/2003)
Day Care (Added 3/14/2006)	
Permitted by Special Exception	
Accessory use/wind generation systems	(Adopted 3/10/09)
Auto Dealer	Multi-Family Dwellings (3 to 5 units)
Auto, Boat & Engine Repair	
Mixed Use II District - (MII)	
Permitted Uses by Right:	
Accessory Uses	
Long-Term Storage Facility	Auction Halls

Manufactured Housing/Mobile Homes	Bed & Breakfast, Tourist Homes, Inns, Lodging and Boarding
Municipal Buildings & Facilities	Professional Offices & Clinics
Boat Storage	Single-Family Dwelling
Contractor's Yards	Two-Family Dwellings
Home Business	Veterinarian
Home Occupation	Warehousing
Day Care	
Permitted Uses by Special Exception:	
Accessory Use/Wind generation systems	Multi-Family Dwellings (3 to 5 units)

Residential District -R	
Permitted by Right:	
Accessory Uses	Municipal Buildings & Facilities
Bed & Breakfast, Tourist Homes, Inns, Lodging & Boarding	Manufactured Housing/Mobile Homes
Home Occupations	Single-Family Dwellings
	Two-Family Dwellings
Permitted by Special Exception:	
Accessory use/wind generation systems (Adopted 3/10/2009)	Multi-Family Dwellings (3 to 5 Units)
Boat Storage	Churches
Nursing & Convalescent Homes	Day Care
Professional Offices & Clinics	Home Business
Veterinarian	Marinas

Rural-Residential District – (RR)	
Permitted by Right:	
Accessory Use	Manufactured Housing/Mobile Homes
Cemeteries	Municipal Buildings & Facilities
Farming	Single-Family Dwellings
Forestry	Two Family Dwellings
Home Occupations	
Permitted by Special Exception:	
Accessory use/wind generation systems (Adopted 3/10/2009)	Bed & Breakfast, Tourist Homes, Inns, Lodging Boarding
Marinas	Motels & Hotels
Boat Storage	Nurseries & Greenhouses
Campgrounds	Nursing & Convalescent Homes
Churches	Professional Offices & Clinics
Day Care	Recreation Facilities
Golf Courses	Resource Extraction
High-Tech Research & Development Firms (Added 3/11/2003)	Restaurants (Excluding Drive-in Restaurant)
Saw Mills	Home Business
Schools (Public & Private) (Added 3/11/2003)	Kennels
Veterinarian	

Rural Lands District – (RL)	
Permitted by Right:	
Accessory Use	Manufactured Housing/Mobile Homes
Farming	Single-Family Dwellings
Forestry	Two-Family Dwellings
Home Occupations	
Permitted by Special Exception:	
Accessory use/wind generation systems (Adopted 3/10/2009)	Churches
Nurseries & Greenhouses	Day Care
Recreation Facilities	Home Business
Saw Mills	Municipal Buildings & Facilities
Veterinarian	

4.15 SPECIAL EXCEPTION CRITERIA FOR USES

The Zoning Board of Adjustment pursuant to its powers outlined in Article X may, subject to appropriate conditions and safeguards such as Site Plan Review with the Planning Board, approve certain uses as Special Exceptions. Uses potentially qualifying for exceptions are listed in Section 4.10. The Board, in acting on the application for a Special Exception, shall take into consideration the following criteria:

- (1) That the selected site is an appropriate location for the proposed use.
- (2) That adequate and safe highway access is provided to the proposed site and that there is adequate off-street parking provided for the proposed use.
- (3) That adequate method of sewage disposal are available at the proposed site.
- (4) That the proposal will not be detrimental, hazardous, or injurious to the neighborhood.
- (5) That the proposed use is consistent with the spirit of the Ordinance and the intent of the Master Plan.

4.20 PROHIBITED USES -

Any use not specifically permitted is prohibited. **(Amended 3/14/2000)**

4.30 OVERLAY DISTRICT USES.

4.31 WETLANDS - Permitted Uses.

Permitted uses are those which will not require the erection or construction of any structures or buildings, will not alter the natural surface configuration by the addition of fill or by dredging; and uses that are otherwise permitted by the Zoning Ordinance. Such permitted uses include the following:

- (1) Forestry – tree farming using best management practices in order to protect streams from damage and prevent sedimentation;
- (2) Cultivation and Harvesting of crops according to recognized soil conservation practices including the protection of the Wetlands from pollution caused by fertilizers, pesticides and herbicides used in such cultivation;
- (3) Wildlife and Refuges;
- (4) Parks and Recreation Uses consistent with the purpose and intent of this ordinance;
- (5) Conservation Areas and Nature Trails;
- (6) Open Spaces as permitted or required by the Subdivision Regulations or the Zoning Ordinance;
- (7) Wetlands Use not consistent with the above are prohibited;
- (8) The following uses provided the applicant provides approvals from the Wetlands Board, USDA Natural Resources Conservation Service and Sunapee Conservation Commission to the Zoning Administrator
 - (a) Streets, roads and other access ways and utility right-of-way easements, including power lines and pipe lines, if so located and constructed as to minimize any detrimental impact of such uses upon the Wetland;
 - (b) Water Impoundments;
 - (c) The undertaking of a use not otherwise permitted in the Wetlands District, if it can be shown that such proposed use will not require the erection or construction of any structures or buildings and will not alter

the surface configuration by the addition of fill or by dredging .

4.32 Aquifers. Landfills, dumps and use that would use, store or handle hazardous materials, salt storage and intensive coverage are prohibited. Lots shall not be less than 2 acres. Maximum coverage shall not exceed 20%. Drainage, erosion, vegetation, etc., shall be maintained to insure non-contamination, yet insure proper aquifer recharge.

4.33 Shorelines - Specific Provisions.

(A) Prohibited Uses:

- (1) Salt Storage Sheds
- (2) Junk Yards
- (3) Solid or Hazardous Waste Facilities, and
- (4) Fertilizer, except for lime

(B)

(1) Docks for boating and swimming facilities are permitted subject to required State permits and standards. **(Amended 03/08/2016)**

(2) A proposal for noncommercial use of water related structures, commercial use of water related structures, condominium docking facility or marina accommodating more than eight (8) boats provided it is permitted in the underlying use district, shall be subject to Site Plan Review by the Planning Board and shall be subject to the following minimum standards:

(a) All construction in or on ponds over ten (10) acres and other waters of the State requires a permit from the New Hampshire Wetlands Board and DES. **(Amended 3/10/2009)**

(b) A noncommercial use of water related structures, commercial use of water related structures, condominium docking facility or marina accommodating more than eight (8) boats shall contain a minimum lot area of one acre plus 3,000 square feet per boat slip or dry storage space to be used during the boating season.

(c) If winter boat storage is proposed, the plan shall include a design for winter boat storage facilities.

(d) Parking shall be provided at the rate of one space for each boat slip and for each dry storage space, except for those spaces used exclusively for winter storage.

(e) Toilet facilities, approved by the New Hampshire Water Supply and Pollution Control Division of the Department of Environmental Services, shall be provided.

(f) A pumping facility for the removal of holding tank waste shall be provided. The facility shall meet all standards established by the New Hampshire Water Supply and Pollution Control Division of the Department of Environmental Services and any other applicable State regulations. This requirement may be waived by the Planning Board during the Site Plan

Review process. **(Amended 3/10/1992)**

(g) Boating areas shall, wherever possible, be isolated from the swimming areas. Where isolation is not possible, and a boating area is allowed adjacent to a beach area, it shall be separated from the swimming area by appropriate safety devices and adequately signed.

(3) The traveled portion of the road shall be set back a minimum of seventy-five (75) feet from normal high water except for driveways and parking areas which shall be set back fifty (50) feet and bridges and bridge approaches and access ways for firefighting equipment and boat launching which shall have no setbacks. All roads shall be constructed in accordance with an erosion and sedimentation control plan approved by the Planning Board which meets the requirements of Section 8.

(4) Beach and dock construction may be permitted in accordance with the requirements set forth herein. In addition, all alterations of the shoreline require a permit from the New Hampshire Wetlands Board as set forth in RSA 483-A and 483-B-1. **(Amended 3/10/2009)** The Conservation Commission shall review all permit applications submitted to the Wetlands Board and shall recommend approval, disapproval, or take no action. **(Amended 3/14/2017)**

(5) Lots within the Shoreline Overlay District shall not be used as common areas for waterfront access to other lots in a development, regardless of the location of such lots, unless approved by the Planning Board in accordance with the Standards and Criteria set forth in the various Land Use Ordinances.

(Amended 3/14/2006)

(6) Rights to gain access to a water body by or through a Shore land lot shall not be created or attached to any real estate. Waterfront access shall be gained only in accordance with the standards set forth below and subject to Planning Board approval.

(7) Specific Provisions for Residential Development with Waterfront Access:

(a) All residential development with shore frontage or rights of access to

(I) shore frontage shall meet the following minimum requirements: Each dwelling unit with direct water access and whole shore frontage as part of the lot dimensions shall have a minimum shore frontage of two hundred (200) feet.

(II) New lots within the Shoreline Overlay District which are dependent on subsurface sewage disposal systems shall be at least 150' in width at all points.

(b) Lots within the Shoreline Overlay District used as common waterfront areas or for the purpose of waterfront access shall meet the following minimum criteria:

(I) The shore front common area shall contain a minimum of two (2) acres;

(II) The shore front common area shall have a minimum of two hundred (200) feet of shore frontage for the first dwelling unit or member having a right of use, and an additional fifty (50) feet of shore frontage for each additional dwelling unit or member;

- (III) No building shall be permitted other than toilet and changing facilities, unless approved by the Planning Board;
 - (IV) The minimum number of vehicular parking places provided at the waterfront development area shall be equal to the number of dwelling units in the subdivision, development or lodging facility;
 - (V) Toilet facilities, approved by the New Hampshire Water Supply and Pollution Control Division of the Department of Environmental Services shall be provided.
- (c) Any use of a common area or area or access for business or commercial purposes shall be subject to the provisions of Site Plan Review.
 - (d) The frontage requirements of 7(a), and 7(b)(ii) above may be reduced by the ZBA if a zone bounded by a high-water line is dedicated and maintained in its natural state and if such modification is consistent with the intent of the ordinance.
 - (e) All common property located within the Shoreline Overlay District shall meet all provisions of the Shore land Protection Act (RSA 483-B-1) (**Amended 3/10/2009**)

(8) Erosion Control.

(a) Construction.

(I) Erosion and sedimentation control plans shall be required for all construction, filling, grading, dredging, and other activities requiring land disturbance within the Shoreline Overlay District. The erosion control plan shall incorporate the design standards from the publication Storm water Management and Erosion and Sediment Control Handbook for Urban and Developing Areas in New Hampshire, prepared for the DES by the Rockingham County Conservation District in cooperation with the USDA Soil Conservation Service, August 1992, a copy of which is on file in the Planning/Zoning Office. In accordance with these standards, new structures shall be designed to prevent runoff over exposed mineral soil. (**Amended 3/14/1995**)

(II) For minor land disturbances such as utility line or stairway construction and disturbed areas of one hundred (100) sq. ft. or less, the Board of Selectmen may reduce the amount of detail needed in an erosion control plan. The Board of Selectmen shall review and decide to approve or deny all plans before issuing a Certificate of Compliance, and may require the applicant to post a bond or other security to assure conformance with approved plans. The security shall not be released until the Board of Selectmen has certified completion of the required improvements in accordance with the plan. The Board of Selectmen may request that the Conservation Commission review the plan and make recommendations.

(III) Erosion and sedimentation control plans shall describe the nature and purpose of the land disturbing activity, topography,

vegetation, and drainage. Erosion and sedimentation control plans shall be developed in conformity with guidelines of the U.S.D.A. Soil Conservation Service and with guidelines of the N.H. Water Supply and Pollution Control Division of the Department of Environmental Services under RSA 149:8-A. Erosion control measures shall be installed before construction and grading if possible.

(b) **Cutting and Removal of Natural Vegetation within the Natural Woodland Buffer:** The preservation of natural vegetation on the shore land is important for the protection of the water quality of lakes and ponds, and the control of erosion. Dead and living trees that provide dens and nesting places for wildlife are encouraged to be preserved and planting efforts that are beneficial to wildlife are also encouraged. The Natural Woodland Buffer shall be defined as the area within 150' of Normal High-water.

(I) A cutting and clearing plan shall be subject to the approval of the Planning Board for the following:

(1) Cutting within the Natural Woodland Buffer of more than five (5) trees having a diameter of six (6) inches or more at a point 4.5 feet above existing ground in any 12-month period. **(Amended 3/14/2017)**

(2) Removal of large areas of vegetation (over one thousand [1000] square feet) within the Natural Woodland Buffer in any calendar year. **(Amended 3/12/1996)**

The Board of Selectmen or their Agent shall review and approve the cutting of all trees having a diameter of six (6) inches or more. **(Amended 3/12/1996)**
(Amended 03/08/2016)

In addition, on ponds, lakes or rivers, any cutting, or removal of natural vegetation must be by permit from DES. **(Amended 3/10/2009)**

(II) **(Repealed 3/12/1996)**

(III) Where natural vegetation is removed it shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion and preserving natural beauty.

(IV) Normal trimming, pruning, and thinning (cutting and clearing not included in (i) above) to enhance growth, to minimize the entry of vegetative debris into lakes and ponds, or to prevent the overgrowth of natural beaches is permitted as is felling and replacement of decaying trees and shrubs

(V) Not more than a maximum of 50% of the basal area of trees and a maximum of 50% of the total number of saplings shall be removed for any purpose in a 20-year period. Replacement planting with native or naturalized species may be permitted to maintain the 50% level. Trees, saplings, shrubs, and ground covers which are removed for structures, driveways, or parking areas shall be excluded when computing percentage limitations, but such

exclusion shall be limited up to an area of 7500 square feet.
(Amended 3/12/1996)

(VI) Stumps and their root systems which are located within 50' of normal high-water shall be left intact in the ground, unless removal is specifically approved by the Wetlands Board pursuant to RSA 482-A.
(Adopted 3/12/1996)

(VII) A Well-Distributed Stand of Vegetative Matter shall be maintained in the Natural Woodland Buffer except for those areas within 20' of existing or proposed structures, 12' from the centerline of driveways, and 10' from the edge of parking areas. The exempted area may not exceed 25% of the existing basal area in the natural woodland buffer of the lot. The exception does not apply to minor structures. This exception also does not apply to the area within 50' of a lake, pond, or fourth order stream where cutting shall be limited to 10' around a proposed structure.
(Amended 3/09/2010) (Amended 3/11/2014)(Amended 3/14/2017)

(9) The following permits are required by the State of New Hampshire Department of Environmental Services for properties within the Shoreline Overlay District:

- (a)** Permit for any new septic system, replacement septic system, or increase in the sewerage load on an existing septic system;
- (b)** Permit for the subdivision of any lot, regardless of lot size, if such lot is dependent on an on-site subsurface sewage disposal system;
- (c)** Permit for the alteration of terrain exceeding 50,000 square feet;
- (d)** Permit or waivers as required under RSA 483-B-1. **(Amended 3/10/09)**

Any local approvals for projects within the Shoreline Overlay District shall be contingent upon the receipt of all applicable State approvals. **[Amended 3/12/1996]**

4.40 PERSONAL WIRELESS SERVICE FACILITIES (Adopted 3/13/2001)

(A) Purpose and Intent. It is the express purpose of this Section to:

- (1)** permit carriers to locate personal wireless service facilities in Sunapee, in compliance with the Telecommunications Act of 1996;
- (2)** enable wireless services to become available to the citizens of Sunapee;
- (3)** ensure that personal wireless service facilities are consistent with the town's land use policies and goals; and
- (4)** ensure that personal wireless service facilities are compatible with the rural setting and character of Sunapee, including its aesthetics and visual features.

Compatibility is measured based on the change in community scale and character in relation to the height, mass, materials, contrasts, or proportion within the surroundings of a proposed personal wireless service facility. In particular, Sunapee wishes to preserve its many scenic views, its historic structures and areas, and its rural character. All four of the above stated purposes have equal value, and none shall take precedence.

(B) Location

Construction of new personal wireless service facilities shall comply with the following location hierarchy:

- (1) Carrier Service Facilities shall be co-located on existing towers, whether inside the town limits or in adjacent communities; if such towers are not available, then
- (2) Carrier Service Facilities shall be located on existing structures such as bell towers, cupolas, barns, etc.; if such structures are not available, then
- (3) Carrier Service Facilities shall be located on newly constructed tower(s), provided such new towers comply with this Section.

Personal wireless service facilities shall be permitted in. Applicants seeking approval for personal wireless service facilities shall first evaluate existing structures for the siting of personal wireless service facilities. Only after finding that there are no suitable existing structures pursuant to this Section, shall a provider propose a new ground mounted facility.

Personal wireless service facilities may be located on existing structures, including, but not limited to, buildings, towers or other mounts, utility poles and towers, and related facilities, provided that such installation preserves the character, appearance and integrity of those structures.

If the applicant demonstrates that it is not feasible to locate on an existing structure, new personal wireless service facilities shall be designed so as to be camouflaged to the greatest extent possible, including but not limited to use of compatible building materials and colors, screening, landscaping and placement within trees or on the side slope of a hill or mountain. Flat, non-reflective paint shall be used.

(C) Applicability

This Section shall apply to personal wireless service facilities proposed to be located on property owned by the Town of Sunapee, on privately owned property, and on property that is owned by any other governmental entity that leases such property to a carrier.

(D) Definitions

The definitions set forth in this Ordinance, when the context so requires, are controlling. When further definitions are required, all New Hampshire statutory and Telecommunications Act of 1996 (TCA) definitions shall apply to this Section. The following definitions apply only to this Section.

Antenna. The surface from which wireless radio signals are sent and/or received.

Antenna Array. A collection of antennas attached to a mount to send and receive radio signals.

Average Tree Canopy Height. An average height found by inventorying the height at above ground level (AGL) of all trees over twenty (20) feet in height within a 150 ft. radius of the proposed facility. Trees to be removed for installation are not to be included in the calculation.

Camouflaged. A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure, or placed within an existing or proposed structure.

Carrier. A Company that provides personal wireless services, also sometimes referred to as a provider.

Co-location. The use of a single mount on the ground by more than one carrier (vertical co-location) or the same carrier with multiple licenses, and/or the use of several mounts on an existing building or structure by more than one carrier or the same carrier with multiple licenses.

Equipment Shelter. An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which are housed equipment for personal wireless service facilities such as batteries and electrical equipment. Equipment Shelters are sometimes referred to as base transceiver stations.

Fall Zone. The area on the ground from the base of the ground mounted personal wireless service facility that forms a circle with a diameter equal to twice the height of the personal wireless service facility, including any antennas or other appurtenances. The fall zone is the area within which there is a potential hazard from falling debris (such as ice) or collapsing material.

Guyed Tower. A monopole or lattice tower that is secured to the ground or other surface by diagonal cables for lateral support.

Height. The height above ground level (AGL) from the natural grade of a site to the highest point of a structure.

Lattice Tower. A type of mount with multiple legs and structural crossing bracing between the legs that is self-supporting and freestanding.

Mast. A thin pole that resembles a streetlight standard or a telephone pole. A dual-polarized antenna is typically deployed on a mast.

Monopole. A thicker type of mount than a mast that is self-supporting with a single shaft of wound steel or concrete or other material that is designed for the placement of antennas and arrays along or within the shaft.

Mount. The structure or surface upon which antennas are mounted including, but not limited to, the following types of mounts:

- a. roof-mounted (mounted on the roof of a building);
- b. side-mounted (mounted on the side of a building);
- c. ground-mounted (mounted on the ground);
- d. structure-mounted (mounted on a structure other than a building); and,
- e. towers, masts, and monopoles.

Personal Wireless Service Facility. Facility for the provision of personal wireless service as defined by the Telecommunications Act of 1996, as amended. Personal wireless service facilities include a mount, antenna, equipment shelter and other related equipment.

Personal Wireless Services. Commercial mobile radio services, unlicensed wireless services, common carrier wireless exchange access service as described in the Telecommunications Act of 1996, as amended, and other wireless services intended to serve the public or private sectors.

Security Barrier. A barrier that restricts an area from unauthorized entry or trespass.

Separation. The distance between one carrier's antenna array and another carrier's antenna array.

(E) Application Requirements

Applicants shall be required to submit the following information to the Planning Board:

- (1) A diagram and/or map showing the view shed of the proposed personal wireless service facility including all buildings and accessory structures.
- (2) Photo-simulations from at least four directions which adequately represent the appearance of the completed structure when viewed from inhabited areas or roads within the Town during the winter months after leaves have fallen from the trees and other vegetation.
- (3) An inventory of existing personal wireless service facilities that are within Town borders, including specific information about the location, height, design as well as feasibility for co-location.
- (4) If the applicant is proposing a new personal wireless service facility, written evidence demonstrating that no existing structure within two miles of the proposed personal wireless service facility can accommodate the applicant's needs. This evidence can consist of:
 - (a) Substantial evidence that no existing structures are located within the geographic
 - (b) Substantial evidence that existing facilities are not of sufficient height to meet the applicant's engineering requirements or do not have sufficient structural strength to support applicant's proposed equipment.
 - (c) Substantial evidence that existing facilities have no additional capacity.
 - (d) Substantial evidence that co-location on an existing facility would cause electromagnetic interference at the existing facility, or vice-versa.

(F) New Construction: Burden of Proof

When applying for construction of a new tower, mast, monopole, or similar structure, the applicant shall have the burden of proving that there are no existing structures that are available and suitable to locate its personal wireless service facility and/or transmit or receive radio signals. To meet that burden, the applicant shall take all appropriate actions as may be required from the applicant, which may include but not necessarily limited to the following actions:

- (1) The applicant shall submit a list of all contacts made with owners of potential sites regarding the availability of potential space for a personal wireless service facility.
- (2) The applicant shall provide copies of all letters of inquiry made to owners of existing structures and letters of rejection. If letters of rejection are not provided, at a minimum, unanswered "Return Receipt Requested" forms from the U.S. Post Office shall be provided for each owner of existing structures that was contacted.
- (3) If the applicant claims that a structure is not capable of physically supporting a personal wireless service facility, a licensed professional civil engineer must certify this claim. The certification shall, at a minimum, explain the structural issues and demonstrate that the structure cannot be modified to support the personal wireless service facility without unreasonable costs.

(G) Use Provisions

A personal wireless facility shall require a Certificate of Zoning Compliance in all cases and may be permitted subject to compliance with all land use regulations as indicated by approval by the Planning Board.

(H) Dimensional Requirements.

Personal wireless service facilities shall comply with the following requirements:

- (1) **Height, Existing Structures and Utility Poles:** Carriers that locate new personal wireless service facilities on existing structures may be permitted to increase the height of those structures no more than ten (10) feet, if the additional height will not adversely impact the aesthetics or otherwise violate this Section. This increase in height shall only be permitted once for each structure.
- (2) **Height, Ground-Mounted Facilities:** Ground-mounted personal wireless service facilities shall not exceed the greater of sixty (60) feet or ten (10) feet above the average tree canopy height.
- (3) **Setbacks:** All personal wireless service facilities and their equipment shelters shall comply with the building setback provisions of the Sunapee Zoning Ordinance.
- (4) **Fall Zone for Ground Mounts:** In order to ensure public safety, the minimum distance from the base of any ground-mount of a personal wireless service facility to any property line, public road, habitable dwelling, business or institutional use, or public recreational area shall be, at a minimum, the distance equal to the fall zone, as defined in this Ordinance. The fall zone may cross property lines, so long as the applicant secures a fall zone easement from the affected property owner(s). The area of the easement shall be shown on all applicable plans submitted to the Town, and the terms of the easement shall be provided as part of the Site Plan Review. Fall zones may overlap.
- (5) **Fall Zone for Non-Ground Mounts:** In the event that an existing structure is proposed as a mount for a personal wireless service facility, a fall zone shall not be required, but the setback provision of the Sunapee Zoning Ordinance shall apply. In the case of pre-existing nonconforming structures, personal wireless service facilities and their equipment shelters shall not increase any non-conformities.

4.50 Cluster Development Regulations (Adopted 3/11/2003)

(A) Purpose

The purpose of the Cluster Development provisions of this ordinance is to encourage flexibility in design and development of land in order to promote the conservation of open space, historic resources and natural features while allowing for the efficient use of the land. The Cluster Development provisions will allow for a variety of housing types on lots of reduced dimensions. The efficiency of design will help in the conservation of resources, specifically in the building of roads and utilities.

(B) General Requirements

- (1) **Minimum Cluster Area** – The gross land area of a parcel proposed for a Cluster Development must be a minimum of five (5) contiguous acres.
- (2) **Permitted Uses** – The Cluster Development is strictly residential in nature. Therefore the only permitted uses are those residential uses ordinarily permitted in the underlying zoning district (i.e. single-family, two-family, and/or multi-family homes). Right including but not limited to garages, sheds, barns, tennis courts, and swimming pools also allows accessory residential uses.
- (3) **Density** – The number of dwelling units permitted within a Cluster Development shall not exceed the number allowed in the underlying zoning district.
- (4) **Permissible Zoning Districts** – A Cluster Development is permitted in all

zoning districts.

(5) Lot Size and Frontage Requirements – The Planning Board shall determine the minimum lot size based on factors such as character of the land, type of housing proposed, and adequacy of sewage disposal. In no case shall a cluster lot have less than 15,000 square feet of area or less than 75' of road frontage.

(6) Buffer Strip – A buffer strip of 50' shall be maintained between any structure and the perimeter boundary of the overall tract (this includes the Right-of-Way line of any road). This strip shall consist of existing, natural vegetation wherever feasible. The Planning Board shall have the discretion to determine the size and type of any re-vegetation required.

(7) Setbacks – No building may be located within 20' of the edge of any road or 10' from the edge of any right-of-way within the development or 10' from any side or rear property line of a cluster lot unless such property line is part of the buffer strip as defined above. **[Amended 3/14/2006]** For Cluster Developments created after the passage of this provision, there shall be no side or rear yard setbacks unless such is part of the buffer strip defined above.

(8) Building Separations – No building shall be located closer than 20' to any other building in the Cluster Development. The Planning Board may require greater separations after consultation with the Fire Department regarding adequacy of fire protection at the site.

(9) Lot Coverage – Lot coverage calculations shall be based on the entirety of the Cluster Development. The allowable lot coverage for the Cluster Development shall not exceed the limits prescribed in the underlying zoning district.

(10) Open Space Requirements

(a) The total area of the open space shall equal at least half of the total gross land area of the Cluster Development. Open space shall be considered areas exclusive of any lot, any road or utility right-of-way, parking areas and any amenity to the development (i.e. swimming pools, tennis courts, garages, barns, storage, etc....)

(b) There shall be a continuity of open space throughout the development. Where necessary this continuity may be maintained using pedestrian or bicycle paths.

(c) All covenants, deeds, or other agreements regarding the management and perpetuity of the open space shall be reviewed and approved by Town Counsel with the expense paid by the developer.

(C) Procedure

Subdivision approval by the Planning Board is required for all Cluster Developments. The subdivision application will be processed concurrently with the Cluster Development request. All requirements of the Subdivision Regulations must be met in addition to the provisions in this ordinance.

(D) Review Criteria

The Planning Board shall not approve any Cluster Development unless all of the following criteria are satisfied:

- (1) Approval of the Cluster Development would result in a more desirable layout than would be possible through a conventional subdivision which strictly conforms to the requirements of the Zoning Ordinance.
- (2) The proposed Cluster Development will harmoniously integrate into the surrounding neighborhood.
- (3) The location, size and topography of the open areas make them suitable for use as common areas, recreational purposes, conservation purposes, and/or agricultural purposes.
- (4) The proposed Cluster Development plan will keep the property in harmony with the natural environment by concentrating development on those parts of the property which have the least natural limitations to development and by protecting those parts of the property which are most environmentally sensitive such as wetlands, flood plains, aquifers, steep slopes, ridge tops, stream banks, and lake shores.
- (5) The proposed Cluster Development conforms to all the requirements of the Subdivision Regulations and the Zoning Ordinance.
- (6) The Cluster Development proposal preserves to the maximum extent feasible the scenic open space on the property, particularly that which is visible from the public road system.

4.60 Planned Unit Development (Adopted 3/11/2003)

(A) Purpose

The purpose of the Planned Unit Development provisions of this ordinance is to encourage flexibility in the uses of land while promoting the conservation of open space and natural features. The Planned Unit Development provisions will allow for a variety of housing types and/or commercial uses on a tract of land without the creation of individual lots. The efficiency of design will help in the conservation of resources, specifically in the building of roads and utilities. The Planned Unit Development will help encourage the mix of uses so typical of small New England villages.

(B) General Requirements

- (1) **Minimum Parcel Area** – The gross land area of a parcel proposed for a Planned Unit Development must be a minimum of two (2) contiguous acres.
- (2) **Permitted Uses** – All uses allowed in the underlying zoning district will be allowed in the Planned Unit Development. If Special Exception allows a use, the Zoning Board of Adjustment shall first approve it.
- (3) **Density** – The number of dwelling units permitted within a Planned Unit Development shall not exceed the number allowed in the underlying zoning district.
- (4) **Permissible Zoning Districts** – A Planned Unit Development is permitted in the Village, Mixed-Use, and Rural-Residential zoning districts.
- (5) **Setbacks** – No building may be located within 20' of the edge of any road or 10' from the edge of any right-of-way within the development. Setbacks as prescribed in the underlying zoning district will apply to the boundary of the overall parcel.

- (6) **Building Separations** – No building shall be located closer than 20' to other building in the Planned Unit Development. The Planning Board may require greater separations after consultation with the Fire Department regarding adequacy of fire protection at the site.
- (7) **Lot Coverage** – The allowable lot coverage for the Planned Unit Development shall not exceed the limits prescribed in the underlying zoning district.
- (8) **Open Space Requirements**
 - (a) The total area of the open space shall equal at least one-quarter (in Village and Mixed-Use Districts) and one-half (in the Rural-Residential District) of the total gross land area of the Planned Unit Development. Open space shall be considered areas exclusive of any road or utility right-of-way, parking areas and any amenity to the development (i.e. swimming pools, tennis courts, garages, barns, storage, etc....)
 - (b) There shall be a continuity of open space throughout the development. Where necessary this continuity may be maintained using pedestrian or bicycle paths.
 - (c) All covenants, deeds, or other agreements regarding the management and perpetuity of the open space shall be reviewed and approved by Town Counsel with the expense paid by the developer.

(C) Procedure

Site Plan Review approval by the Planning Board is required for all Planned Unit Developments. The Site Plan Review application will be processed concurrently with the Planned Unit Development request. All requirements of the Site Plan Review Regulations must be met in addition to the provisions in this ordinance.

(D) Review Criteria

The Planning Board shall not approve any Planned Unit Development unless all of the following criteria are satisfied:

- (1) The proposed Planned Unit Development will harmoniously integrate into the surrounding neighborhood.
- (2) The location, size and topography of the open areas make them suitable for use as common areas, recreational purposes, conservation purposes, and/or agricultural purposes.
- (3) The proposed Planned Unit Development plan will keep the property in harmony with the natural environment by concentrating development in those parts of the property which have the least natural limitations to development and by protecting those parts of the property which are most environmentally sensitive such as wetlands, flood plains, aquifers, steep slopes, ridge tops, stream banks, and lake shores.
- (4) The proposed Planned Unit Development conforms to all the requirements of the Site Plan Review Regulations and the Zoning Ordinance.

(5) The Planned Unit Development proposal preserves to the maximum extent feasible the scenic open space on the property, particularly that which is visible from the public road system.

4.70 SMALL WIND ENERGY SYSTEMS AND METEOROLOGICAL TOWERS

(A) Purpose and Intent.

It is the express purpose of this Section to:

- (1) permit residents to install Small Wind Energy Systems and Meteorological Towers, in all zoning districts in Sunapee, in compliance with RSA 674.61-66;
- (2) ensure that Small Wind Energy Systems and Meteorological Towers are installed in a manner that protects the public health, safety and welfare;
- (3) ensure that Small Wind Energy Systems and Meteorological Towers are consistent with the town's land use policies and goals;
- (4) ensure that Small Wind Energy Systems and Meteorological Towers are compatible with the rural setting and character of Sunapee, including its aesthetics and visual features. In particular, Sunapee wishes to preserve its many scenic views, its historic structures and areas, and its rural character; and
- (5) establish standards for compliance with the requirements established in this section.

All five of the above stated purposes have equal value, and none shall take precedence.

(B) Location

- (1) Small Wind Energy Systems and Meteorological Towers shall be ground mounted on monopoles or guyed monopoles.
- (2) Two or more Small Wind Energy Systems shall not be co-located on a single ground-mount.
- (3) Small Wind Energy Systems and Meteorological Towers shall be limited to one installation per lot of record.

(C) Applicability

This Section shall apply to Small Wind Energy Systems and Meteorological Towers proposed to be located on property owned by an applicant.

(D) Definitions

The definitions set forth in this Section, when the context so requires, are controlling. When further definitions are required, the definitions of the Sunapee Zoning Ordinance shall apply. The following definitions apply only to this Section.

CO-LOCATION. The use of a single ground-mount by more than one Small Wind Energy System.

EQUIPMENT SHELTER. An enclosed structure, cabinet, shed, vault, or box near the base of the mount within which is housed equipment for a Small Wind Energy System or a Meteorological Tower, such as batteries and electrical equipment.

GUYED MONOPOLE. A monopole that is secured to the ground or other surface by diagonal cables for lateral support.

LATTICE TOWER. A type of tower with multiple legs and structural cross-bracing between the legs.

METEOROLOGICAL TOWER. A tower, with anemometers, wind direction vanes, data loggers and devices used to monitor wind speed and direction over a period of time, not to exceed eighteen (18) months, to characterize the wind resource at the proposed location of a Small Wind Energy System.

MONOPOLE. A type of tower that is a single shaft of steel or concrete or other material. Mount. The structure or surface upon which a Small Wind Energy System or a Meteorological Tower is mounted.

SHADOW FLICKER. The visible flicker effect when the rotating blades of a wind generator cast shadows in a repeating pattern of light and shadow.

SMALL WIND ENERGY SYSTEM. A wind energy conversion system consisting of a wind generator, a tower, and associated control or conversion electronics which has a rated capacity consistent with the net metering specifications of RSA 362-A:9 and which will be used primarily for on-site consumption.

SYSTEM HEIGHT. The vertical distance from ground level at the base of the tower to the tip of the wind generator blade of a Small Wind Energy System when at its highest point.

TOWER. A monopole, or guyed monopole.

TOWER HEIGHT. The vertical distance from ground level at the base of the tower to the top of the fixed portion of the tower (excluding the wind generator of a Small Wind Energy System).

WIND GENERATOR. The blades and associated mechanical and electrical conversion components of a Small Wind Energy System, mounted on top of a tower.

(E) Application Requirements

A Special Exception shall be required for the installation or modification of a Small Wind Energy System or a Meteorological Tower.

Applicants shall submit the following information:

- (1) A plan or plans showing:
 - (a.) A plot plan or perimeter boundary survey, by a licensed land surveyor, certifying the location of the tower and that the setback requirements of this section are met. The Zoning Board may require additional information.
 - (b.) Title of drawing, including name and address of applicant as well as town tax map and lot number;
 - (c.) Appropriate signature block for the signature of the chair of the Zoning Board of Adjustment;
 - (d.) Names and addresses of owners of record and names of abutting landowners; (Names and addresses of owners, abutters, engineer, architect, surveyor, or soil scientist shall also be provided on a separate 8.5" x 11" sheet of paper);

- (e.) A site location map (may be shown as an inset) which shows the location of the proposed Small Wind Energy System or Meteorological Tower in relation to major roads of the town;
- (f.) North point, bar scale, date of preparation and dates of any revisions;
- (g.) Name, address and seal, if applicable, of person or firm preparing the plan;
- (h.) The shape, size and location of existing and proposed structures and of the proposed mount, guy wire anchorages and associated equipment shelters for the Small Wind Energy System or Meteorological Tower;
- (i.) Existing streams or wetlands, marshes, lakes or ponds, whether natural or manmade, and any abutter's water rights;
- (j.) Existing and proposed driveways and parking spaces
- (k.) Layout of existing and proposed sewage disposal systems, including septic tank(s), leach field and associated piping, or tie-in to the Town sewer, if located within the fall zone of the proposed tower;
- (l.) Proposed landscaping showing proposed buffering for mount;
- (m.) Location of wells, water supply pipes, power and telephone poles and lines, including the location and size of all existing and proposed utility lines and easements, if located within the fall zone of the proposed tower;
- (n.) Location, size and wording of proposed signs related to the installation of the proposed Small Wind Energy System;
- (o.) Right-of-way of all fronting streets;
- (p.) The proposed date of removal of a proposed Meteorological Tower and its associated equipment from the site.

- (2) A copy of the application documents submitted to the State of New Hampshire D.O.T. for driveway access permits where a new driveway connecting to a state highway is proposed;
- (3) A narrative describing how the proposal minimizes the visual impact of the Small Wind Energy System or Meteorological Tower on neighbors and the community through the choice of location of the mount. For a Small Wind Energy System, the narrative shall also address the steps taken, through the design of the wind generator, to minimize its visual impact on neighbors and the community, and, through siting or buffering, to minimize the impact of shadow flicker on neighboring dwellings.
- (4) Specifications for the Small Wind Energy System or Meteorological Tower, including manufacturer, model number, system height, tower height, tower type (monopole or guyed monopole).

(5) For a Small Wind Energy System, a sound level analysis, prepared by a registered professional engineer or the wind generator manufacturer, demonstrating that the proposed Small Wind Energy System shall not cause sound levels to exceed 55 decibels, using the A scale (dbA), at any property line, except during severe wind storms.

(F) Use Provisions

A Small Wind Energy System or Meteorological Tower, after receiving Special Exception approval from the Zoning Board of Adjustment, shall require a Certificate of Zoning Compliance and may be permitted subject to compliance with all land use regulations as indicated by approval by the Zoning Administrator.

(G) Special Requirements.

Small Wind Energy Systems and Meteorological Towers shall comply with the following special requirements:

(1) Height:

(a.) The system height of a Small Wind Energy System shall not exceed one hundred and fifty (150) feet.

(b) The tower height of a Meteorological Tower shall not exceed one hundred and fifty (150) feet

(2) Setbacks:

(a.) Small Wind Energy Systems shall be set back a distance, measured from the center of the tower, equal to one hundred and fifty percent (150%) of the system height from all property lines, public roads and utility lines.

(b.) Meteorological Towers shall be set back a distance, measured from the center of the tower, equal to one hundred and fifty percent (150%) of the tower height from all property lines, public roads and utility lines.

(c.) Guy wire anchorages and equipment shelters shall comply with the building setback provisions of the Sunapee Zoning Ordinance.

(3) Temporary Installations: Meteorological Towers shall be installed for periods of time not to exceed eighteen (18) months from date of issuance of a Certificate of Zoning Compliance by the Zoning Administrator.

(4) Non-conforming Sites and Structures: In the case of nonconforming sites or structures, Small Wind Energy Systems, Meteorological Towers, their guy wire anchorages and equipment shelters shall not increase any non-conformities.

(H) Standards for Small Wind Energy Systems and Meteorological Towers.

The Zoning Board of Adjustment, prior to approving a Special Exception, shall verify that the proposed Small Wind Energy System or Meteorological Tower complies with the following requirements:

(1) Visibility

(a.) Siting - The applicant's narrative shall demonstrate to the Zoning Board of Adjustment that the visual impact to neighbors and the community of the

proposed Small Wind Energy System or Meteorological Tower has been minimized through the siting of the mount, the design of the wind generator (if applicable), and buffering of the mount and equipment shelters.

(b.) Decorative Items - Flags streamers and other decorative items shall not be attached to a Small Wind Energy System or a Meteorological Tower.

(c.) Color - A Small Wind Energy System or Meteorological Tower shall be finished in a single color, a non-reflective stock color of the manufacturer.

(2) Approved Wind Generators - The manufacturer and model of the wind generator for a proposed Small Wind Energy System shall have been approved by the California Energy Commission or the New York State Energy Research and Development Authority, or approved by the State of New Hampshire.

(3) Equipment Shelters - Equipment shelters for a Small Wind Energy System Meteorological Tower shall be designed consistent with one of the following design standards:

(a.) Located in underground vaults; or

(b.) Screened behind an effective year-round landscape buffer and /or wooden fence, equal to the height of the proposed building,. The style of fencing and/or landscape buffer shall be compatible with the neighborhood.

(4) Access:

(a.) Tower: Step bolts or ladder rungs for access to a tower shall not be installed below eight feet above the top surface of the mount.

(b.) Equipment: Ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.

(5) Lighting and Signage:

(a.) Lighting: Small Wind Energy Systems and Meteorological Towers shall not be lighted, except as required by the Federal Aviation Administration.

(b.) Signage: Signs shall be limited to those needed to warn of any danger. Signs shall be limited to two square feet in area and shall be mounted six feet or less above ground level.

(6) Towers - All towers shall be of a monopole or guyed-monopole type. Lattice towers are prohibited.

(7) Power Lines - Power lines serving a Small Wind Energy System or a Meteorological Tower shall be buried.

(8) Noise - A Small Wind Energy System shall not cause sound levels to exceed 55 decibels, using the A scale (dbA), at any property line, except during severe wind storms.

(I) Abandonment

(1) Notification - No less than thirty (30) days prior to abandonment or discontinuation of use of a Small Wind Energy System, the owner shall notify the Zoning

Administrator by certified U.S. mail of the proposed date of abandonment or discontinuation of use. In the event that the owner fails to give such notice, the Small Wind Energy System shall be deemed abandoned upon the discontinuation of its use for a period of twelve (12) months.

(2) Removal:

(1) Upon abandonment or discontinuation of use of a Small Wind Energy System the owner shall physically remove the Small Wind Energy System within three (3) months from the date of abandonment or discontinuation of operation, or by the definitive date stated in a notice from the Town of Sunapee.

(2) The owner of a Meteorological Tower shall physically remove the Meteorological Tower on or before the approved date of removal indicated in the Certificate of Zoning Compliance.

(3) “Physically Remove” shall include, but not be limited to:

(a) Removal from the subject property of the tower, tower guys and anchors, wind generator, equipment shelters, and all other structures and equipment placed on the site or constructed in relation to the operation or support of the Small Wind Energy System or Meteorological Tower.

(b) Proper disposal of the waste materials from the site in accordance with local and state solid waste disposal regulations.

(3) Failure to Remove:

(1) If the owner of a Small Wind Energy System does not remove the Small Wind Energy System within three (3) months from the date of abandonment or discontinuation of operation, the Zoning Administrator shall issue a notice of violation to the property owner where the Small Wind Energy System is installed.

(2) If the owner of a Meteorological Tower does not remove the Meteorological Tower by the approved date of removal indicated in the Certificate of Zoning Compliance, the Zoning Administrator shall issue a notice of violation to the property owner where the Meteorological Tower is installed.

(J) Regional Notification

The Zoning Administrator shall review an application for a Certificate of Zoning Compliance to construct a Small Wind Energy System, pursuant to RSA 36:5, to determine whether it is a development of regional impact, as defined in RSA 36:55.

If the Zoning Administrator determines that the proposal has the potential for regional impact, he or she shall notify the Board of Selectmen and the regional planning commission and the affected municipalities, by certified mail, who shall have thirty (30) days to submit comments to the Board of Selectmen and the Zoning Administrator, prior to the issuance of the Certificate of Zoning Compliance

4.80 Workforce Housing Development

(A) Authority

This Article is adopted pursuant to RSA 674:58-61 and RSA 674:21, I (k) and is intended as a Workforce Housing Provision.

(B) Purpose

The purpose of the Workforce Housing Development provisions of this ordinance is to provide reasonable opportunities for the development of Workforce Housing within Sunapee for both home ownership and rental.

(C) General Requirements

(1) Minimum Number of Units – A Workforce Development shall have a minimum of eight (8) dwelling units.

(2) Minimum Parcel Area – The gross land area of a parcel proposed for a Workforce Housing Development must be in conformance with the underlying zone.

(3) Permitted Uses – All uses allowed in the underlying zoning district will be allowed in a Workforce Housing Development. If a use is permitted by Special Exception, the Zoning Board of Adjustment shall first approve it.

(4) Density – The number of dwelling units permitted within a Workforce Housing Development shall not exceed the number allowed in the underlying zoning district.

(5) Permissible Zoning Districts – A Workforce Housing Development is permitted in the Village, Mixed-Use, and Rural-Residential zoning districts.

(6) Setbacks - Setbacks as prescribed in the underlying zoning district will apply to the boundary of the parcel. No building may be located within 20’ of the edge of any road or 10’ from the edge of any right-of-way within the development.

(7) Building Separations – No building shall be located closer than 20’ to any other building in a Workforce Housing Development. The Planning Board may require a greater separation after consultation with the Fire Department regarding adequacy of fire protection at the site.

(8) Lot Coverage – The allowable lot coverage for a Workforce Housing Development shall not exceed the limits prescribed in the underlying zoning district.

(9) Open Space Requirements

(a) In the Rural-Residential District, the total area of open space shall be at least one- quarter of the total gross land area of a Workforce Housing Development.

(b) Open space area shall be calculated exclusive of any road or parking area.

(c) There shall be a continuity of open space throughout a development. Where necessary this continuity may be maintained using pedestrian or bicycle paths.

(d) All covenants, deeds, or other agreements regarding the management and perpetuity of the open space shall be reviewed and approved by Town Counsel with the expense paid by the developer.

(10) Assurance of Affordability and Continued Affordability

(a) The applicant shall demonstrate that the housing initially constructed and offered for sale or rent shall meet the definition of Workforce Housing as defined in ARTICLE XI, Definitions of the Zoning Ordinance.

(b) In order to qualify as Workforce Housing under this Article, the applicant shall demonstrate that the Workforce Housing units will remain affordable for sales and rentals in accordance with the Area Income Limits tabulated by HUD for a period of 30 years through a deed restriction, restrictive covenant, or a contractual arrangement through a local, state or federal housing authority or other non-profit housing trust or agency. For the 30-year term, the deed restriction, restrictive covenant, or contractual arrangement established to meet this criterion must make the following continued affordability commitments:

i. The annual rent for Workforce Housing rental units shall not exceed the rent established by HUD, based on family size and median income of Sullivan County as defined in HUD's Area Income Limits.

ii. The sales price of a Workforce Housing unit that is to be sold to an owner-occupier shall not exceed the price established by HUD based on family size and median income of Sullivan County as defined in HUD's Area Income Limits at the time of sale.

iii. Deed restrictions, restrictive covenants, or contractual arrangements related to dwelling units established under this Article shall be documented on all plans filed with the Planning Board and the Sullivan County Registry of Deeds and in all deeds to individual units.

(D) Incentives

After considering cost factors presented by the applicant, including, but not limited to, land, subdivision improvements for roads, utilities & drainage, marketing, insurance, labor, building materials and profit to identify a total gross cost of the project and per unit gross costs, the Planning Board may approve one or more of the following incentives if the applicant demonstrates that the Town's land use ordinances and regulations render the proposed Workforce Housing Development project economically unviable.

(1) Density Increase - The Planning Board may approve a density increase up to sixteen (16) dwelling units per acre.

(2) Building Size Increase – In multi-family Workforce Housing Developments, the Planning Board may approve buildings having up to ten (10) dwelling units.

(3) Lot Size Reduction – In Sub-division applications the Planning Board may allow a decrease of the required minimum lot size to not less than 5,000 square feet.

(4) Road Frontage Reduction – In Sub-division applications the Planning Board may allow a decrease in the required road frontage.

(E) Procedure

(1) Site Plan Review approval by the Planning Board is required for all Workforce Housing Developments which include commercial uses and/or multi-family housing. All requirements of the Site Plan Review Regulations must be met for such developments in addition to the provisions in this Section.

If the Workforce Housing Development includes the subdivision of land, Sub-division approval by the Planning Board is required. All requirements of the Sub-division Regulations must be met in addition to the provisions in this Section.

- (2) The applicant for approval of a Workforce Housing Development shall submit a written statement of that intent with the application.
- (3) The Planning Board shall provide the applicant with notice, in writing, of any conditions or restrictions it imposes upon any approval of an application for Workforce Housing Development, stating the period, which shall not be less than thirty days, within which the applicant shall respond. An approval with conditions or restrictions shall not be a final approval.
- (4) Upon receipt of a notice of approval with conditions or restrictions,
 - (a) The applicant may notify the Planning Board that it accepts the conditions or restrictions, at any time, and the Planning Board may issue its final decision without further action; or,
 - (b) The applicant may submit evidence, in writing, to the Planning Board to establish the cost of complying with the conditions and restrictions and the effect on economic viability, within the period set by the Planning Board. Upon receipt of such evidence from the applicant, the Planning Board shall allow the applicant to review the evidence at its next meeting for which 10 days' notice can be given. The Planning Board shall give notice of the meeting to the applicant at least 10 days in advance. At such meeting the Planning Board may also receive and consider evidence from the public. After such meeting the Planning Board may affirm, alter or rescind any or all of the conditions or restrictions of its approval and issue its final decision ; or
 - (c) If, the applicant fails to submit such evidence within the period set by the Planning Board, the Planning Board may issue its final decision without further action at any time after the expiration of the period.

(F) **Review Criteria**

The Planning Board shall not approve any Workforce Housing Development unless all of the following criteria are satisfied:

- (1) The proposed Workforce Housing Development will harmoniously integrate into the surrounding neighborhood.
- (2) The location, size and topography of the required open areas in the Rural Residential District make them suitable for use as common areas, recreational purposes, conservation purposes, and/or agricultural purposes.
- (3) The proposed Workforce Housing Development plan will keep the property in harmony with the natural environment by concentrating development on those parts of the property which have the least natural limitations to development and by protecting those parts of the property which are most environmentally sensitive such as wetlands, flood plains, aquifers, steep slopes, ridge tops, stream banks, and lake shores.
- (4) The proposed Workforce Housing Development conforms to all applicable requirements of the Site Plan Review Regulations, the Subdivision Regulations and the Zoning Ordinance.
- (5) The Workforce Housing Development preserves to the maximum extent feasible the scenic open space on the property, particularly that which is visible from the public road system.

4.90-Accessory Dwelling Unit (Adopted 3/14/17)

A. Authority

This article is adopted pursuant to RSA 674.21 and is intended as an Accessory Dwelling Unit (ADU) provision.

B. The purpose of the ADU is to provide societal benefits for aging homeowners, recent college graduates, care givers, disabled persons, etc....

C. General Requirements

- 1.** An ADU will be permitted in all districts by special exception.
- 2.** Only one (1) ADU is allowed per single family dwelling unit.
- 3.** Owner occupancy is required in the main unit or ADU
- 4.** The ADU cannot be larger than 1,000 square feet. It must be within or attached with heated space to the single-family dwelling and there must be a connecting door between units.
- 5.** Setback dimensions for the ADU must meet the same guidelines as the single-family unit.
- 6.** The ADU addition must comply with existing lot coverage standards as specified elsewhere in this Ordinance.
- 7.** There shall not be more than 2 bedrooms in the ADU.
- 8.** Septic designs and sewer hook ups shall accommodate the number of bedrooms as required by Article VII of this ordinance.
- 9.** Proper off-street parking must be provided per section 3.40(e) of this Ordinance.

ARTICLE V: SIGN REGULATIONS

5.10 Applicability

5.11 General. No sign shall be erected, enlarged, or altered in any way without a permit from the Board of Selectmen, except for the cases noted in Section 5.20.

5.12 Nonconforming Signs. Any sign existing at the time of passage of this ordinance and subsequent amendments not conforming to the terms of the ordinance shall be allowed to continue nonconforming until such sign is replaced for any reason.

5.13 Removal of Unused Signs. Any sign now or hereafter existing which no longer advertises a bona-fide business conducted, or product sold, shall be removed by the owner, agent or person having the beneficial use of the building or property upon which the sign may be located within fourteen (14) days after written notification from the Selectmen or Agent; otherwise, the same shall thereby constitute a public nuisance.

5.20 SIGNS EXEMPT FROM THESE REGULATIONS.

5.21(a). Signs erected or maintained by the Town of Sunapee or the State of New Hampshire.

5.21(b). Unlighted signs less than one (1) square foot per side and used on premises for street numbers, nameplates, and other non-commercial purposes.

5.21(c). Temporary Real Estate, Service or Trade signs located on the premises affected. Such Signs shall not exceed ten (10) square feet per side.

5.21(d). Temporary signs advertising a Special Event (Fair, Yard Sale, Community Event, Political Campaign, etc.) not to exceed six (6) square feet per side. Signs may be maintained for a period of 3 weeks but shall be removed immediately after the event.

5.30 GENERAL REQUIREMENTS.

5.31 Size. Signs in the Residential, Rural-Residential, Rural Lands, and Mixed Use Districts shall not exceed 48 squares per side and total signage on any given lot may not exceed 96 square feet. Signs in the Village-Commercial and Village-Residential Districts shall not exceed 24 square feet per side and total signage on any given lot may not exceed 48 square feet. Total signage includes signs noted in Section 5.20 as well as any signs attached to the exterior of the buildings. Any structure or device used as a sign base or carrier will be considered in the square footage calculation. **(Amended 3/8/2011)**

5.32. Location. No sign may be placed so as to endanger, obscure or confuse or otherwise create a hazardous condition, particularly for the traveling public. Signs shall be exempt from the setback requirements of Article III. No sign may be placed in a public right-of-way except for those referred to in Section 5.21(a).

5.33 Illumination. Signs may be illuminated only by continuous indirect white light sources so placed that they will not constitute a hazard or nuisance due to glare. Signs may not be neon or internally lit. **(Amended 3/8/2011)**

5.34 Off-Premise Signs. Off-premise signs shall be for directional purposes only and shall not exceed 8 square feet per side.

5.35 Site Plan Review. Planning Board approval may be required prior to the placement of signs advertising a business under the Jurisdiction of Site Plan Review.

5.40 ADMINISTRATION AND ENFORCEMENT

5.41. Fees. The fees for sign permits shall be set by the Board of Selectmen. **(Amended 3/13/2007)**

5.42. Applications and Permits. Applications for Sign Permits shall be filed with the Board of Selectmen. The Selectmen shall approve with conditions, or deny all Completed Applications. Administrative Appeals may be filed with the Zoning Board of Adjustment.

5.43. Enforcement. The Selectmen are hereby given the power and authority to enforce this Article, and to promulgate regulations and procedures for controlling signage within the purview of this Article. **(Amended 3/8/1994)**

ARTICLE VI: NONCONFORMING STRUCTURES, LOTS

6.10 NONCONFORMING STRUCTURES.

6.11 Continuance. Existing structures and existing uses shall not be affected by this ordinance, nor shall structures under construction at the time of passage of this ordinance. Future changes to the structure(s) or usage changes shall be consistent with this ordinance.

6.12 Restoration and Reconstruction. A non-conforming structure existing at the time of the passage of this Ordinance may be replaced on the same or a smaller footprint and having the same or lower height by a new structure having the same purpose and use provided that the non-conformity to this Ordinance is not increased thereby.

The replacement or alteration of a non-conforming structure with a structure that increases the horizontal or vertical dimension or one which increases the non-conformity to this Ordinance, shall only be permitted by variance or, if permitted hereby, by Special Exception. (Amended 3/12/1991) (Amended 3/11/2014) (Amended 3/14/17)

6.20 NONCONFORMING VACANT LOT.

6.21 Single Lot. A non-conforming vacant lot existing at the time of passage of this ordinance may be used, provided:

- (a) all setback requirements of this ordinance are met;
- (b) the arrangement for sewage disposal are approved in accordance with the provisions of Town and State law.

6.30 NONCONFORMING USES

6.31 Any lawful use, which is non-conforming with Section 4.10, as of the date on which this section is adopted, may continue provided that it does not create a health or safety hazard and is not a nuisance. Existing Uses that are Non-Conforming with Section 4.10 at the time of passage of this section, may expand in size up to 50% without variance or special exception, provided that Site Plan Review approval is obtained from the Planning Board and provided that such expansion is otherwise in full compliance with the remaining terms of this ordinance.

(Adopted 3/14/2000) (Amended 3/12/13)

6.32 GRANDFATHER POLICY

In order for any non-conforming use or structure to remain in effect or to be rebuilt, must comply with the “Grandfathered Rights Policy” for the Town of Sunapee.

1. Structures existing on or before March 12, 1987 are grandfathered.
 - a. Structures that have been removed may be rebuilt, provided that within two years of removal, a building permit is applied for an approved. The new structure must fit within the footprint existing at the time the structure was removed, and the original footprint, building size and location must be documented. Acceptable documentation includes a signed survey, pictures and sworn affidavits from neighbors attesting to the footprint, building size, and location. Note: the replaced building may be enlarged along those dimensions where the enlargement would meet the current Zoning Ordinances.
 - b. Under extraordinary conditions, such as family death, etc...., the Selectmen may, at their discretion, extend the building permit application period for an additional year.
2. “Grandfathered” uses:

- a. All existing uses may continue as long as it complies with the Planning Board requirements that were in existence at the time the use was established. Exceptions to this policy include those uses, which impact public health and safety.
- b. A use that has been discontinued for two years is no longer “grandfathered”.
- c. One exception to (b) is discontinuance caused by the death of the owner. In that case, the usage must be discontinued for three years before “grandfathered” rights are lost.
- d. In either situation (b) or (c), the Selectmen may extend the applicable discontinuance period by an additional year or, under extraordinary circumstances, an additional two years. To qualify for this extension, the owner of the “grandfathered” usage must apply for the extension with a written plan justifying the extension, including backup details to support the plan. There will be no further extensions and all “grandfathered” uses will end.

This policy was passed by a vote of the Board of Selectmen on December 14, 1998
(Adopted 3/12/1987) (Amended 3/12/2013) (Amended 3/11/2014)

6.40 LEGAL NONCONFORMING LOTS

The Planning Board may approve subdivision/lot line adjustments on pre-existing, non-conforming lots without additional approval by the Zoning Board of Adjustment provided that the new lot size(s) and dimension(s) are not more non-conforming than what was existing. The subdivided or adjusted lot will be considered a legal non-conforming lot and still qualify for the same dimensional reductions or special exceptions given to a pre-existing, non-conforming lot. **(Adopted 3/08/2011) (Amended 3/14/17)**

ARTICLE VII: CONVERSION REQUIREMENTS

7.10 No structure shall be converted in any manner resulting in increased septic flow or water utilization without:

- 1) The approval of the New Hampshire DES Water Division Subsurface Systems Bureau or
- 2) Certification from a New Hampshire licensed septic designer that the existing designed system will handle the additional septic flow or
- 3) Approval from the Sunapee Water & Sewer Commission if on municipal sewer.
(Amended 03/07/2016)

ARTICLE VIII: ADMINISTRATION

8.10 ENFORCEMENT

8.11 Authority and Responsibility. It shall be the duty of the Board of Selectmen, and the Board is hereby given the power and authority, to enforce the provisions of this ordinance. The Board of Selectmen may appoint an Agent to carry out any action in the enforcement of this ordinance as the Selectmen may direct.

8.12 Violations. Upon determination of the Selectmen or Agent that this ordinance is

being violated, the Selectmen shall take immediate steps to enforce the provisions of this ordinance. If necessary, the Board of Selectmen shall seek an injunction in the Superior Court or by any other legal action enforce the provisions of this ordinance.

8.13 Penalties. Any person who violates the terms of this Zoning Ordinance shall cease or correct the violation within fifteen (15) days after receipt of a written notice of the violation from the Board of Selectmen via registered or certified mail. If action by the Zoning Board of Adjustment is necessary to correct a violation, the time period to correct the violation shall be sixty (60) days after receipt of such written notice. If the violation has not been ceased or corrected within the specified grace period, the violator shall be subject to a fine as allowed by current RSAs with such fine beginning on the first day the violator received notice of the violation. **(Amended 3/9/2004)**

8.20 CERTIFICATE OF ZONING ORDINANCE COMPLIANCE – PERMIT

8.21 Certificate Required If:

- (a) a new structure is to be constructed or installed;
- (b) an existing structure is dimensionally changed;
- (c) additional dwelling units are to be added to existing structure.
- (d) any municipal structure is to be constructed or dimensionally changed.
- (e) major alterations interior improvements are planned.
- (f) a structure is to be demolished.
- (g) a Site Plan Review approval has been granted by the Planning Board.

8.22 Application Form. Application shall be filed with the Board of Selectmen. The application shall contain the full name of the owner and/or his agent. It shall contain a certification that the property does not lie in an unapproved subdivision. The application shall describe briefly the proposed work and give such other information as may be required to determine whether the proposed work complies with the provisions of the ordinance. The application must be signed by the land owner(s) or designated representative and submitted complete with proper fees in order to be considered. In order for a person to be considered a designated representative, a letter of acknowledgment from the landowner must be filed with the Town of Sunapee. **(Amended 3/13/2007)**

8.23 Issuance of Certificate of Compliance.

- (a) No work shall be started on the proposed site until the owner or his agent has first secured a certificate of compliance from the Selectmen or Agent.
- (b) Upon approval of the application, the Selectmen shall issue a certificate authorizing such construction or alteration.
- (c) No certificate shall be issued or become effective for nonresidential or multi-family land use without Site Plan Review by the Planning Board.
- (d) A copy of the certificate shall be posted by the applicant on-site within public view and maintained in good condition until the project is completed.
- (e) Certificates of compliance are transferrable to new property owners. **(Adopted 3/10/2015)**

8.24 Certificate Fees.

(a) **The Board of Selectmen shall set all Certificates of Zoning Compliance Fees. (Amended 3/11/2003)**

(b) An After-the-Fact application shall be filed for all projects where work has commenced prior to the issuance of a Certificate of Compliance. This application must be filed prior to the consideration of the project by the ZBA, Planning Board and/or the Board of Selectmen. The After-the-Fact application will be acted upon by the Selectmen at the same time the Certificate of Compliance is considered.

A fee as set by the Board of Selectmen shall be paid at the time of application for the After-the-Fact permit. This fee shall be paid in addition to any fees charged for the Certificate of Compliance and/or any other applications. The “grace period” provision Section VIII of this Ordinance shall not apply to After-the-Fact permits. **(Adopted 3/10/1992/Amended 3/9/2004)(Amended 3/13/2007)**

8.25 Revocation or Lapse of Building Certificate.

(a) A violation of or variation from the terms, conditions or authorization of a certificate of compliance by the holder thereof or his agent, architect or contractor shall be cause for the revocation of said certificate. Such revocation shall be made at the discretion of the Selectmen and when such revocation is made, the Selectmen shall issue a cease and desist order, a copy of which is to be posted on-site by the Selectmen within public view and maintained in good condition. An appeal from such action may be made as provided in Article X of this ordinance.

(b) The Selectmen or Agent shall, at the expiration of 12 months during which no earnest or substantial effort has been made to carry out the construction or alterations authorized in a certificate of compliance, declare, and send notice to the holder thereof, that said certificate has lapsed. Said certificate may be reinstated on application of the proposed user to the Selectmen or Agent.

8.26 Any person who is aggrieved by the issuance of a Certificate of Compliance or who feels such a Certificate was issued in error, may file an Appeal to the Zoning Board of Adjustment as described in Article X. Such an appeal must be filed within 30 days of the date the Certificate of Compliance is issued. **(Adopted 3/10/1992)**

ARTICLE IX: SITE PLAN REVIEW

9.10 SITE PLAN REVIEW.

9.11 Authorization. The Planning Board is authorized by this ordinance to review, approve or disapprove site plans for the development of tracts for nonresidential purposes, and for multi-family dwelling units, whether or not such development includes a subdivision or re-subdivision of the site.

9.12 Site Review required. The Planning Board shall require site plans to be submitted to it for review by any applicant seeking any new or altered nonresidential use, whether or not such application is one for which a certificate of compliance or variance is required. The Planning Board shall give special consideration to home occupations,

waiving much of the review process if it is determined such usage does not significantly increase traffic, parking requirements, noise, odor, waste disposal, lighting, or other negative influence on the local community. Planning Board approval of such site plans shall be a necessary prerequisite to issuance of any certificate of compliance. Zoning Board approval of a variance or special exception (if required) shall be a prerequisite to any approval of a site plan review by the Planning Board. Disapproval of such site plans by the Planning Board shall be subject to appeals to the Superior Court in the same manner as provided for appeals from decisions of the Planning Board as prescribed by law. **(Amended 3/14/1989) (Amended 3/10/2015)**

ARTICLE X: ZONING BOARD OF ADJUSTMENT

10.10 ORGANIZATION

10.11 Zoning Board of Adjustment. The Board shall consist of five members and five alternate members all of whom are residents of Sunapee. The 5 Regular members, shall be elected by the Town voters.. The Alternate members shall be appointed by vote of the Regular ZBA members. The term of a Regular and Alternate shall be for three years. If a vacancy occurs, the ZBA will appoint a new member who will fulfill the term in the manner prescribed by applicable State Statutes. Members of the Board who are currently appointed will be permitted to serve out their term of office. When the term expires they shall be eligible for election to the Board by Town vote. **(Amended 3/13/2001)**

10.12 Removal. After public hearing, elected members and alternate members may be removed by the Selectmen upon written findings of inefficiency, neglect of duty, or malfeasance in office. In such cases the Selectmen shall file with the Town Clerk a written statement of reasons for removal under this section, and provide a copy of the statement to the member or alternate member who has been removed.

10.13 Disqualification of Member. No member of the Zoning Board of Adjustment shall sit upon the hearing of any question which the Board is to decide in a judicial capacity if that member would be disqualified for any cause to act as a juror upon the trial of the same matter in any action at law. If a member is disqualified or unable to act in a particular case pending before the Board, the Chairman shall designate an alternate if one is present to act in his/her place.

10.14 Meetings. Meetings of the Zoning Board of Adjustment shall be held at the call of the Chairman and at such time as the Board may determine.

The presence of 3 regular members of the Zoning Board of Adjustment shall constitute a quorum to transact business. If a quorum is present, the Chairman may designate an alternate member to act in the absent member's place. Hearings must be scheduled by the Zoning Board of Adjustment within thirty (30) days of receipt of notice of appeal. All meetings of the Board shall require ten (10) days advance notice except that in an emergency members shall be given the best practicable notice. The Board shall keep minutes of the proceedings, showing the vote of each member upon each question, or if absent or failed to vote indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the Town Office and shall be a public record available for inspection in accordance with the provisions of RSA 91-A:4 and RSA 91-A:5. At its first regular meeting, the Board shall adopt rules of

procedure concerning the method and conduct of its business. The rules shall be placed on file with the Town Office for public inspection in accordance with the provisions of RSA 91-A:4 and RSA 91-A:5.

10.15 Officers. The Board shall elect its own Chairman and the officers it deems necessary.

10.16 Powers. The Zoning Board of Adjustment is hereby authorized and empowered to adopt such rules of organization and procedure as are necessary for the official administration and enforcement of this ordinance and which are consistent with State law. In addition, the Zoning Board of Adjustment shall have the power to:

- (a) hear and decide appeals if it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of the Zoning Ordinance.
- (b) authorize upon appeal in specific cases such variance from the terms of the Zoning Ordinance as will not be contrary to the public interest, if, owing to special conditions, a literal enforcement of the provision of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done;
- (c) grant special exceptions to the terms of this ordinance where the special exceptions are in harmony with the general purposes and intent of this ordinance. All such special exceptions shall accord with the general or specific rules contained in this ordinance; and
- (d) at its sole discretion compel the attendance of witnesses when exercising its regulatory or quasi-judicial powers. All expenses incurred for such action shall be paid by the party or parties requesting that a witness be compelled to attend. The Chairman or Acting Chairman may administer oaths to all witnesses before the Board.
- (e) If after a period of twenty-four (24) months from the date a Variance or Special Exception is granted by the Zoning Board of Adjustment, the applicant has neither applied for nor received a Certificate of Compliance from the Board of Selectmen, the Variance or Special Exception will become void. The time period during which a previously granted Variance or Special Exception shall remain valid may be extended by the Zoning Board of Adjustment for one additional twelve (12) month period without a public hearing upon written application of the applicant, but only so long as no amendments to the Town's Zoning Ordinance, Subdivision Regulations, or Site Plan Review Regulations, which would limit or preclude the use for which the Variance or Special Exception was granted, have been enacted or described in a notice posted or published pursuant to RSA 675:3 as of the date of such written application.

(Amended 3/12/1991) (Amended 3/10/2015)

10.20 APPEALS TO THE ZONING BOARD OF ADJUSTMENT Any person aggrieved

or any Officer, Department, Board or Bureau of the Town affected by any decision of the administrative officer or Board may appeal to the Board. Such appeal must occur within a reasonable time as provided by the rules of the Board, or as provided elsewhere in this Ordinance, by filing with the Administrative Officer from whom the appeal is taken and with the Zoning Board of Adjustment a Notice of Appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the Zoning Board of Adjustment all papers constituting the record upon which the action appealed was taken. An appeal stays all proceedings under the action appealed from unless the officer from whom the appeal is taken certifies to the Zoning Board of Adjustment after notice of appeal shall have been filed with him, that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board or the Superior Court on notice to the officer from whom the appeal is taken and cause shown. Applications for appeals must be submitted with proper fees to be considered as complete. **(Amended 3/10/1992) (Amended 3/13/2007)**

10.30 HEARING AND PUBLIC NOTICE REQUIREMENTS Prior to exercising its appeal powers, the Zoning Board of Adjustment shall hold a public hearing. Notice of public hearing shall be given as follows: notice must be sent by certified mail by the Board to the applicant and to all abutters and the notice shall be given not less than five (5) days before the date fixed for the hearing and shall state the time and place of that hearing. The Board shall hear all abutters desiring to submit testimony and all non-abutters who can demonstrate that they are affected directly by the proposal under consideration. The Board may hear such other persons as it deems appropriate. A public notice of hearing shall be published in a newspaper of general circulation not less than five (5) days before the date fixed to hear the appeal and shall indicate the time and place of the meeting and the nature of the relief being sought. The notice shall also be posted in at least two public places in Town not less than five (5) days before the date fixed for the hearing. Where possible, there should be reference to the ordinance sections under which a special exception is being sought or from which a variance is being sought or under which an administrative appeal is being taken. The applicant shall pay all costs of notice in advance, including mailing, publishing and posting. Failure to pay such costs shall constitute valid grounds for the Board to terminate further consideration and to deny the appeal without public hearing. **(Amended 3/14/2006)**

10.40 CONDITIONS TO BE MET

10.41 Administrative Appeal. In ruling on an administrative appeal, the Zoning Board of Adjustment must apply the strict letter of the law. It must determine whether the administrative body correctly or incorrectly interpreted a particular provision of the ordinance. If it finds that the ordinance was properly interpreted, it cannot grant relief (unless a request has been made for a variance or special condition) even if it feels relief might be in order. The Board may reverse or affirm, wholly or in part, the decision or modify the decision and may make such order or decision as ought to have been made.

10.42 Variance. A variance can be granted by the Zoning Board of Adjustment only if it finds that each and every one of the following conditions are met:

- (a) No diminution in value of surrounding properties would be suffered by the granting of the variance;
- (b) The granting of the permit would be a benefit to the public interest;
- (c) Denial of the permit would result in unnecessary hardship to the owner;
- (d) By granting the permit, substantial justice will be done;
- (e) The use will not be contrary to the spirit of the ordinance.

10.43 EQUITABLE WAIVERS Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them. **(Amended 3/11/2014)**

10.50 DECISION Within thirty (30) days after the public hearing, the Board shall issue its decision. The concurring vote of three (3) members of the Zoning Board of Adjustment shall be needed to reverse an action of an administrative official or to decide in favor of an applicant on any matter before it. The Board shall make a final written decision relative to an application or appeal. The decision shall be filed in the Town Office within seventy-two (72) hours after the decision has been made. If the appeal is approved, the decision shall state the conditions of the special exception or variance were found to exist, and shall indicate any conditions attached to the approval. If the appeal is denied, all reasons for denial shall be indicated in the denial letter and on the record.

10.60 REHEARING Within thirty (30) days after any order or decision of the Zoning Board of Adjustment, the Selectmen, any party to the proceedings, or any person directly affected thereby may apply for rehearing by the Board. The motion for rehearing shall be governed by the rules and procedures set forth in RSA 677:2 and RSA 677:3. Any person aggrieved by any order or decision of the Board may appeal the order or decision to the Superior Court pursuant to the rules and procedures set forth in RSA 677:4 through 677:14. **(Amended 3/9/2004)**

ARTICLE XI: DEFINITIONS AND EXPLANATIONS

ABUTTER - RSA 672:3. Any person whose property is located in New Hampshire and adjoins or is directly across the street or stream from the land under consideration by the local land use board. For purposes of receiving testimony only, and not for purposes of notification, the term abutter shall include any person who is able to demonstrate that his land will be directly affected by the proposal under consideration.

ACCESSORY USES – A use on the same lot that is customarily associated with, and incidental and subordinate to, the principal use of the lot. **(Adopted 3/14/2000)**

ACRE - 43,560 Sq. Ft.

AFFORDABLE - For the purpose of workforce housing, Affordable means housing with combined rental and utility costs or combined mortgage loan debt services, property taxes and required insurance that do not exceed 30 percent of a household's gross annual income. **(Adopted 3/09/2010)**

APARTMENT - A dwelling unit in a multiple dwelling intended for let and to be used as a residence by a single family.

AQUIFER - A soil deposit with the capacity to transmit and store large amounts of groundwater. The Aquifer Protection District, as it pertains to this Ordinance, shall be defined as areas delineated as **Stratified Drift Aquifer** and shown on the map entitled, "Altitude of Water Table, Data Collection and Surficial Geology for Stratified Drift Aquifers in the Lower Connecticut River Basin, Southwestern New Hampshire" and prepared by the New Hampshire Department of Environmental Services Water Resources Division in May 1992. **(Amended 3/9/1993)**

BED & BREAKFAST, TOURIST HOMES, INNS, LODGING & BOARDING – An owner occupied single family dwelling in which no more than ten (10) rooms are used to provide transient sleeping accommodations, with meals served to guests only. **(Adopted 3/14/2000)**

CERTIFICATE OF COMPLIANCE - The Certificate issued by the Board of Selectmen and/or its Agent indicating that the project complies with the terms of the Zoning Ordinance, subject to any relief granted by the Zoning Board of Adjustment. **(Amended 3/14/2006)**

CLUSTER DEVELOPMENT - A residential subdivision of a tract of land where housing units are grouped on lots of reduced dimensions. The remaining land in the tract, which does not have buildings or improvements thereon, shall be reserved as permanently protected open space. The density of a cluster development shall not exceed the density prescribed in this ordinance.

COMMERCIAL USE OF WATER RELATED STRUCTURES - Use of a dock, wharf, pier, breakwater, or other structure, or any part thereof, built over, on, or in the waters of the State by permission of the owner of the property to which it is affixed coupled with compensation or consideration. This includes the transfer, lease, sale, rent or other temporary or permanent conveyance, or the conveyance of an interest of such a structure when such action(s) are not so applied to the property to which it is affixed. **(Amended 3/12/1991)**

CONDOMINIUM - The definition of condominium and associated terms shall be according to N.H. RSA, Chap. 376, B:3.

CONDOMINIUM DOCKING FACILITY - A multi-boat slip docking facility in which each boat slip is individually owned. **(Amended 3/12/1991)**

CONFORMING USE - Any uses that are in accordance with the Permitted Uses as specified elsewhere in this Ordinance.

CONTRACTOR'S YARDS – An area used by builders, electricians, plumbers, excavators, roofers, yard maintenance, or other similar contracting service establishments for the storage of materials and equipment only. Heavy equipment and materials shall be either screened or enclosed. There shall be no service or sales on the site and any signs must be in accordance with Section 5.34 of this ordinance and specify for deliveries only. A Site Plan Review will be required. Any use of the contractor yard beyond this definition will require a variance from the Zoning Board of Adjustment **(Amended 3/09/2010) (Amended 3/11/2014) (Amended 03/08/2016)**

COVERAGE - That area occupied by a structure or improvement other than landscaping, thereby including parking areas, driveways, tennis courts and the like.

Coverage, Shoreline Overlay District - Lot coverage in the Shoreline Overlay District is the area occupied by a structure or improvement other than landscaping, thereby including parking areas, driveways, tennis courts and the like. Pervious materials as allowed by the State of New Hampshire Department of Environmental Services may be used for improvements and the use of such materials will not count in the overall lot coverage calculations provided that the total lot coverage of pervious and impervious materials does not exceed the allowable coverage in the non-overlaid portions of each district. The pervious characteristics of the materials must be maintained by the property owner. **(Adopted 3/8/2011)**

DRIVE-IN RESTAURANT - Any place or premise used for sale, dispensing or servicing of food, refreshments, or beverages in automobiles or to customers in automobiles. **(Adopted 3/14/2000)**

DUMP - Area where trash, junk or other non-organic, non-biodegradable materials, other than rocks or dirt, are discarded.

DWELLING UNIT - One room or rooms connected together, constituting a separate, independent housekeeping unit established for owner occupancy, rental or lease, and containing independent cooking, sleeping, and sanitary facilities. **(Amended 3/8/1994)**

DWELLING, SINGLE FAMILY - A single residential building containing one dwelling unit designed for occupancy by not more than one family.

DWELLING, TWO FAMILY - A single residential building containing two dwelling units, designed for occupancy by not more than two families.

DWELLING, MULTI-FAMILY - A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the number of dwelling units provided.

FAMILY - One or more persons occupying a single unit, provided that, unless all members are legally related, no such dwelling unit shall contain more than five unrelated persons, but further provided that domestic servants employed on the premises may be housed on the premises without being counted as a family or families. Foster children are allowed according to New Hampshire State regulations.

FILLING - The placing or depositing of any type of material.

FRONT SETBACK - The distance from the centerline of a road Right-of-Way to a structure or, if applicable, from the end of a road Right-of-Way to a structure. This definition will apply to all State and Town maintained roads and also all private roads meeting town specifications. **(Amended 3/14/2000) (Amended 3/11/2014)**

HEAVY INDUSTRY - Any industry judged by the site plan review process to be excessive in terms of objectionable noise, smoke, odor, dust, dirt, noxious gas, glare, heat, waste products or risk.

HEIGHT - The vertical distance measured from the lowest ground elevation around the structure to the highest level of the roof (excluding cupolas, weathervanes, etc...) (**Amended 3/12/2013**)

HOME BUSINESS – Any business that is conducted within the home by the inhabitants of the home and no more than three non-resident employees. The home business shall meet all the requirements of the Site Plan Review Regulations. If the home business is for retail purposes, it shall be limited to items, which are made on the premises or antiques. The home business shall be subordinate and incidental to the primary residential use of the property and shall not change the residential character of the dwelling or neighborhood. The home business shall not generate noise, odor, traffic, or any other negative influence on the community or neighboring properties. (**Adopted 3/14/2000**)

HOME OCCUPATION – Any use that is customarily conducted in the home by the inhabitants of such home. A home occupation shall not involve on-site sales or customer service. There shall be no employees and no on-site signs, advertising or outside displays. The home occupation shall be subordinate and incidental to the primary residential use of the property and shall not change the residential character of the dwelling or neighborhood. The home occupation shall not generate noise, odor, traffic, or any other negative influence on the community or neighboring properties. (**Amended 3/14/2000**) (**Amended 03/08/2016**)

HOTEL & MOTEL – A building or group of buildings providing sleeping accommodations for persons on a transient basis. Meals may be served to guests but cooking facilities are not allowed in individual rooms. (**Adopted 3/14/2000**)

JUNKYARD – Any use which meets the terms and definitions found in State of New Hampshire RSA 236:112. (**Amended 3/14/2006**)

LOT - A parcel of land at least sufficient in size to meet the minimum requirements for use, coverage and area and to provide required yards and other open spaces. An undersized lot is permissible if it passes state standards for soil conditions and if it is in existence on the date of the adoption of this ordinance.

LOT FRONTAGE - That portion of a lot bordering on a highway, street or right-of-way.

LOT MEASUREMENTS - Depth of a lot shall be the average distance between the front and rear lot lines. Width of a lot shall be the average distance between the side lot lines.

LOT OF RECORD - A lot which is part of a subdivision approved by the Sunapee Planning Board and recorded in the Sullivan County Registry of Deeds, or a lot or created and duly recorded prior to the adoption of Subdivision Regulations by the Town of Sunapee. (**Amended 3/14/2006**)

MANUFACTURED HOUSING – Any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a. (**Adopted 3/14/2000**)

MARINA - A facility whose principal use is the provision of publicly available services for the

securing, launching, storing, servicing, repairing or sales of watercraft or other marine equipment. A facility for short-term docking that is ancillary to other land uses is considered a commercial use and not a marina.. **(Amended 3/12/1991) (Amended 3/11/2014)**

MAXIMUM RESIDENTIAL DENSITY – The maximum number of residential dwelling units allowed within a specified area. Density shall only be calculated using a Dwelling Unit as defined elsewhere in this article. Office spaces, commercial spaces, motel rooms, and other commercial uses do not fall under the requirements of residential density. **(Adopted 03/08/2016)**

NON-CONFORMING USE OF WATER RELATED STRUCTURE - Use of a dock, wharf, pier, breakwater, or other structures, or any part thereof, built over, on, or in, the waters of the State by permission of the owner of the property to which it is affixed coupled with compensation or consideration. **(Amended 3/12/1991)**

NON-CONFORMING LOT - Any lot of record not meeting the requirements of the ordinance, which existed by itself prior to the adopting of this Zoning Ordinance.

NORMAL HIGHWATER - This shall mean:

- (a) For natural fresh water bodies without artificial impoundments, the natural mean high water level as determined by the Division of Water Resources of the Department of Environmental Services;
- (b) For artificially impounded fresh water bodies, the waterline at full pond as determined by the elevation of the top of the impoundment structure and/or as determined by the Division of Water Resources of the Department of Environmental Services.

These elevations will be available in the Planning/Zoning Office. **(Adopted 3/12/1996)**

OCCUPIED - As applied to a structure shall be construed as though followed by the words “or intended, arranged or designed to be occupied.”

OWNER - Includes his duly authorized agent or attorney, a purchaser, devisee, fiduciary, and a person having a vested or contingent interest in the property in question.

PARKING SPACE - Each parking space shall be a minimum of 9' x 18'.

PERMITTED USE - A use that is allowable in the District as a matter of right under the terms of the ordinance.

PERSON - Any natural individual, firm, trust, partnership, association or corporation.

PLANNED UNIT DEVELOPMENT (RESIDENTIAL & OFFICE COMPLEX) – The Planned Unit Development (PUD) for encourage the most efficient and environmentally sound use of a parcel of land while providing for residential development and employment opportunities. The following minimum requirements apply:

- (1) The gross land area of the parcel for a PUD must be a minimum of five (5) acres.
- (2) The PUD must meet the Site Plan Review Regulations set forth by the Planning Board.
- (3) For the Office Complex application, the use is limited to such firms as software development, research, high-tech and other professional applications plus those uses which are permitted in the subject zoning district. Manufacturing and other industrial applications are not allowed.

- (4) For Residential uses, the maximum densities as specified in the underlying zoning district apply. Setbacks apply to all external property lines and roads. **(Adopted 3/14/2000)**

RAIN GARDEN – A water collection-recharge system, which consists of a pretreatment device (such as a catch basin, tank, etc.) and a vegetated leach area. May be mandatory for shoreline overlay properties due to the lot coverage requirements. **(Adopted 3/12/2013)**

RECHARGE AREA - An area where the water is able to be restored to ground, replenishing groundwater supplies.

RECREATION FACILITIES – Any use, which is designed for the purpose of leisure, time activities including, but not limited to, Cross Country Skiing, Sport Clubs, Horse Boarding, Hiking, etc. **(Adopted 3/14/2000)**.

REMODELING - As applied to a building or structure, means any change, addition or improvement to the interior of a building that does not change or rearrange the external dimensions or facilities.

REMOVAL - The moving or shifting from one place or position to another place or position

RESOURCE EXTRACTION – Any use that includes the removal of earth resources. This includes, but is not limited to, quarrying, sand & gravel pits, water extraction, and other similar uses. **(Adopted 3/14/2000)**

ROAD - For the purpose of this ordinance, road applies to all State and Town maintained roads and also all private roads meeting town specifications.

SATURATED SOIL CONDITIONS - Those soil types having a high water table at or near ground surface at least five (5) months of the year.

SETBACK - The minimum distance from the property lines established by the requirements of this ordinance for each zoning district. It is a line which runs parallel to the property lines. (The area between the property line and the minimum setback line shall remain free of structures and fully open to the sky with the exception of a roof projection up to 18” into the setback). **(Amended 3/9/2004)**

SHORE FRONTAGE - The average of the distances of the actual shoreline footage and a straight line drawn between the property lines, both of which are measured at the normal high water line. **(Amended 3/12/1991)**

SIGN - Any structure, device or representation which is designed or used to advertise or call attention to a thing, person, business, activity or place and is visible from any highway or other right-of-way. It does not include the flag, pennant, colors or insignia of any nation, state or town, which is not a part of the sign.

STREAM - A body of moving water, intermittent or not, that travels a course traceable on bare ground year round.

STRUCTURE - Anything constructed or erected with a fixed location on the ground, or attached to something having a fixed location on the ground. Structure includes, but is not limited to a building, swimming pool, mobile home, billboard, pier, wharf. It shall not include a minor structure. **(Amended 3/12/2013) (Amended 3/11/2014)**

STRUCTURE, Minor - A minor structure is exempt from the terms of this Ordinance and shall not require a Certificate of Zoning Compliance. Minor structures shall include the following:

- 1) Fence measuring less than five (5) high from the ground surface provided that the fence is constructed in such a manner as to allow the fence owner the ability to maintain both the fence and fence owner's land, if any, on the neighbor's side of the fence.
- 2) Mail Box
- 3) Flag Pole
- 4) Dog House
- 5) Thirty-two (32) square foot open platform and associated stairs, which is no more than four (4) feet of the ground and is used for access to a structure.
- 6) Gym/swing sets for private residential use
- 7) Pergolas (8'x 10' maximum footprint) **(Adopted 3/11/2014) (Amended 3/14/17)**

UTILITIES - A service such as water, sewer, electricity, telephone, gas.

VARIANCE - A variation from the terms of this ordinance, not otherwise permitted within the district concerned, which may be granted by the Zoning Board of Adjustment pursuant to its discretionary power, where the Board finds that the granting of such variance will do substantial justice and the intent of the ordinance will still be observed.

WATER BODIES - Any and all surface waters, including but not limited to, rivers, streams, creeks, lakes and ponds, which appear on a United States Geological Survey Map of Sunapee. **(Amended 3/10/1992)**

WATERFRONT ACCESS - Shore frontage on or access to a lake, pond or river.

WATERFRONT LOT - A lot where one boundary line abuts a body of water.

WATER IMPOUNDMENT - Excavated area where water is stored.

WATER STORAGE - A fire pond, a water tank, or tower where water is stored for health and/or safety purposes.

WELL-DISTRIBUTED STAND OF VEGETATIVE MATTER - This matter includes trees, saplings, shrubs, and ground covers and their living, undamaged root systems. The distribution of such shall be as follows:

Undeveloped Lots (Prior to March 12, 1996) - Permitted cutting per 50 feet of linear water frontage shall not reduce the total basal area below **9** square feet. If a lot is not 150' in depth, the required basal area shall be proportioned accordingly. Saplings with less than 2" diameter shall not be used to calculate minimum basal area. In no case shall there be any area more than **500** square feet completely cleared of vegetative matter unless such is naturally occurring.

Lots with Dwelling Units (Prior to March 12, 1996) - Permitted cutting per 50 feet of linear water frontage shall not reduce the total basal area below **6** square feet. If a lot is not 150' in depth, the required basal area shall be proportioned accordingly. Saplings with less than 2" diameter shall not be used to calculate minimum basal area.

Basal area is defined as the cross-sectional area of a tree measured at a point 4.5' above the ground. **(Adopted 3/12/1996)**

WETLANDS- Areas such as bogs, marshes, and swamps that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. **(Amended 3/13/1990)** The formal definition of a Wetland shall be consistent with the definition found in RSA 482-A: 2, X. All delineations shall be made as prescribed in RSA 482-A. **(Amended 3/8/2005)**

WORKFORCE HOUSING – Means housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a four person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. “Workforce Housing” also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision. **(Adopted 3/09/2010)**

Reviewed by:

Roger Landry, Zoning Administrator

Michael Marquise, Town Planner